TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 531

JOHN BOSEMAN, PETITIONER,

vs.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 16, 1936.

CERTIORARI GRANTED DECEMBER 21, 1936.

INDEX.

Caption. 1
Plaintiff's Original Petition. 2
Petition for Removal. 17
Notice of Intention to Remove and Service Thereof. 23
Removal Bond and Approval Thereof. 25
Order of Removal. 27
Plaintiff's Trial Amendment to Original Petition. . 29
Defendant's Second Amended Original Answer. . . . 30
Verdict of the Jury. 39
Additional Caption. 40
Findings of Fact and Declarations of Law Refused by the Court With Defendant's Exceptions Thereto. 40
Findings of Fact and Declarations of Law Made by the Court With Defendant's Exceptions Thereto. 43
Order Granting Plaintiff's Motion for Judgment. . 45
Order Overruling Defendant's Motion for Judgment. 46
Judgment. 47

BILL OF EXCEPTIONS (50-205).

Appearances. 50-51
Instruments Offered in Evidence—
The Certificate. 51
Proof of Loss. 62
Physician's Statement Attached to Proof of Loss. 63
Letter from Howell & Howell to Chas. R. Stevenson dated April 12, 1933. 65

Letter from Howell & Howell to Connecticut General Life Insurance Company dated March 6, 1934. 66
Group Policy G5039R. 67-87
Application for Group Policy G5039R. 86
File Marks on Plaintiff's Original Petition. . . 87
Permit of Connecticut General Life Insurance Company to do Business in Texas. 88
Letter from Chas. R. Stevenson to Howell & Howell dated April 13, 1933. 95
Letter from Chas. R. Stevenson to Howell & Howell dated March 2, 1934. 96
Pay-roll Deduction Order Signed by Plaintiff Under Group Policy G5545. 99
Pay-roll Deduction Order Signed by Plaintiff Under Group Policy G5039R. 99
Defendant's Permanent Record Card of Plaintiff's Insurance Under Group Policy G5039. . 147
Defendant's Permanent Record Card of Plaintiff's Insurance Under Group Policy G5545. . 148
Credit Memorandum dated December 22, 1932, from Connecticut General Life Insurance Company to Gulf Oil Corporation of Pennsylvania for Unearned Premium on John Boseman's Insurance Under Group Policy G5039R. 154
Letter from Gulf Oil Corporation of Pennsylvania to Connecticut General Life Insurance Company dated December 22, 1932, Informing Connecticut General Life Insurance Company of Termination of John Boseman's Insurance Under Group Policy G5039R and Termination of His Employment With Gulf Refining Company. 156
Permanent Record Card of John Boseman's Insurance Under Group Policy G5039R. 156

Agreements Made Between Counsel and Offered in Evidence—

That Master Policy G5039R Was in Force and Effect from March 31, 1932, Until April 30, 1933. 91

That Gulf Refining Company Was a Subsidiary Company of Gulf Oil Corporation of Pennsylvania. 92

As to Pay-roll Deductions from John Boseman and the Disposition of Same. 97

Witnesses—

Dr. T. A. Fears. 89

Chas. R. Stevenson—

Direct Examination. 90
Cross Examination. 92
Re-Direct Examination. 94
Re-Cross Examination. 96

H. E. Gardiner—

Direct Examination. 98
Cross Examination. 102
Re-Direct Examination. 104
Re-Cross Examination. 104

John Boseman—

Direct Examination. 105
Cross Examination. 109
Re-Direct Examination. 113
Re-Cross Examination. 114

Dr. F. W. Sutton. 114

D. C. Marcus—

Direct Examination. 115
Cross Examination. 115
Re-Direct Examination. 116

John M. Laird (By Deposition)—
Testimony Offered by Plaintiff..... 116
Testimony Offered by Defendant..... 127

Thomas A. Tully (By Deposition)—
Testimony Offered by Plaintiff..... 122
Testimony Offered by Defendant..... 145

Dr. James W. Long—
Direct Examination..... 159
Cross Examination..... 161

Al Vandevender—
Direct Examination..... 162
Cross Examination..... 163

T. J. Babin—
Direct Examination..... 164
Cross Examination..... 165

Defendant's Motion for Instructed Verdict..... 166
Defendant's Motion for Findings of Fact and Declarations of Law..... 169
Plaintiff's Requested Charges..... 172
Charge of the Court..... 174
Exceptions of Plaintiff to Charge..... 185
Exceptions of Defendant to Charge..... 187
Verdict of the Jury..... 187
Defendant's Motion for Judgment..... 188
Plaintiff's Motion for Judgment..... 192
Order Overruling Defendant's Request for Instructed Verdict and Defendant's Exception Thereto..... 193
Refusal of the Court to Find Facts and Make Declarations Requested by the Defendant, and Defendant's Exceptions Thereto..... 194

Findings of Fact and Declarations of Law Made by the Court and Defendant's Exceptions Thereto.. 196
Order Overruling Defendant's Motion for Judgment and Defendant's Exceptions Thereto..... 198
Order Granting Plaintiff's Motion for Judgment and Defendant's Exceptions Thereto..... 198
Order Extending October, 1935, Term..... 199
Order Granting Extension of Term in This Case.. 200
Order Requiring Entire Charge to be Inserted in Bill of Exceptions..... 202
Agreement of Counsel As to Bill of Exceptions... 202
Order Approving Bill of Exceptions..... 203
Order Keeping Open October, 1935, Term..... 206
Order Keeping Open Term of Court for This Case. 207
Petition for Appeal..... 209
Order Allowing Appeal..... 210
Assignments of Error..... 211
Supersedeas Appeal Bond..... 225
Citation on Appeal..... 228
Waiver of Service of Citation on Appeal..... 229
Praecipe for Transcript..... 230
Clerk's Certificate..... 233

Proceedings in U. S. C. C. A., Fifth Circuit **234**
Minute entry of argument and submission **234**
Opinion, Sibley, J. **234**
Judgment **242**
Motion for rehearing ..... **(omitted in printing)** **243**
Order denying rehearing **243**
Application for stay of mandate **243**
Order staying issuance of mandate **245**
Clerk's certificate **245**
Order allowing certiorari **246**

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. .....

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, APPELLANT,

VS.

JOHN BOSEMAN, APPELLEE.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

Caption.

Be it remembered that at a regular term of the District Court of the United States for the Eastern District of Texas, in the Fifth Circuit, begun and holden at Beaumont, Texas, on the 22nd day of October, A. D. 1934, the Honorable Randolph Bryant, United

States District Judge for the Eastern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

Style of Cause:

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Original Petition of Plaintiff.

In the District Court of Jefferson County, Texas.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

To the Honorable Judge of Said Court:

Comes now John Boseman, hereinafter called plaintiff, complaining of Connecticut General Life Insurance Company, hereinafter called defendant, and for cause of action respectfully represents:

1.

That plaintiff resides in Jefferson County, Texas, and that the defendant, Connecticut General Life Insurance Company, is and was at all times material hereto an insurance corporation or an association in-

corporated in and existing under the laws of the State of Connecticut, authorized and permitted to do and actually carrying on an insurance business in the State of Texas, and having no designated agent for service in this state within the knowledge of plaintiff, service of citation herein may be had by serving the Commissioner of Insurance for the State of Texas, or any member of the Board of Insurance Commissioners of the State of Texas, at Austin, Travis County, Texas.

2.

Plaintiff represents that on or about April 1, 1932, the defendant, Connecticut General Life Insurance Company, for and in consideration of the payment to it of the usual and customary premium therefor, issued and delivered to the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies, the Gulf Refining Company of Port Arthur, Jefferson County, Texas, being one of such companies, a policy of group insurance in writing, same being numbered G-5039-R, bearing the following endorsement: "Co-operative Policy; One Year Renewable Term, Non-Participating; Conversion Option; Permanent Total Disability; Experience Rating Plan; Table of Rates Guaranteed Against Increase for One Year. Policy No. G-5039-R, Connecticut General Life Insurance Company, Hartford, Conn.; Co-operative Life Insurance Policy Issued to Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated Companies of Pittsburgh, Pennsylvania; Date, April 1, 1932;" by the terms

of such group policy defendant insured certain employees of the said companies against death or permanent total disability occurring before age sixty.

The above referred to group policy contains, among other provisions, the following:

> Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy, but will show the insurance protection to which the employee is entitled, to whom payable, and the conversion privilege.
>
> Continuity of Service, provided Payments are made by Employees, as due:
>
> If any employee leaves the Employer's service except for temporary lay-off on account of lack of work and enters the service of any other corporation, firm or individual even temporarily, his employment shall thereupon terminate.
>
> If any employee is temporarily laid off on account of lack of work and his insurance is cancelled, his insurance may be reinstated upon his return to active service and his employment record will be considered continuous from the original employment date, notwithstanding the fact that he may have been working in the meantime.
>
> In the case of any employee absent from duty due to ill health, or other disabling cause, and not employed elsewhere during such absence, he shall

be considered as continuing in the Employer's service unless and until the Employer informs the Company that his employment has terminated.

3.

Plaintiff alleges that said policy of insurance was by defendant executed, issued and delivered to the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies and to the Gulf Refining Company of Port Arthur, Jefferson County, Texas, and that the same is not now and never has been in the possession of this plaintiff, but that all the conditions, stipulations and provisions are well known to the defendant, and plaintiff alleges, upon information and belief, that defendant has in its possession the original of said policy or a true copy thereof, and plaintiff hereby notifies the said defendant to produce same in court upon a trial of this cause, or a true copy thereof, and in the event the original of said policy, or a true copy thereof, is not produced, plaintiff will offer secondary evidence of same.

Plaintiff asserts in this connection that in the event that such group policy, numbered and described as above, is not produced in compliance with the foregoing notice so to do, he alleges that the individual certificate, hereinafter described, issued him by the defendant, contains the complete contract of insurance between himself and defendant, Connecticut General Life Insurance Company.

4.

That the said Gulf Refining Company of Port Arthur, Jefferson County, Texas, is and was at all times material hereto a subsidiary company of and/or an affiliated company with the said Gulf Oil Corporation of Pennsylvania, and that the said Group Policy G-5039-R insured employees of the said Gulf Refining Company, and that the plaintiff herein was an employee of the said Gulf Refining Company and was insured under Policy No. G-5039-R, above referred to, by the issuance to him of Certificate No. R23558.

5.

That subject to the terms and conditions of said policy, above referred to, defendant in consideration of his payment of premiums therefor, executed, issued and delivered to this plaintiff its Certificate of Insurance No. R23558, made effective as of April 1, 1932, said certificate bearing the following endorsement thereon, "The Connecticut General Life Insurance Company of Hartford, Connecticut, Co-operative Group Life Insurance Issued to the Gulf Oil Corporation of Pennsylvania for the benefit of the employees of Itself and its Subsidiaries, Certificate No. R23558, issued under and subject to the terms and conditions of Policy No. G-5039-R to John Boseman;" said certificate being in the principal sum of Four Thousand ($4,000.00) Dollars, payable in the event of death to the beneficiary named therein, or in the event of his

total and permanent disability, occurring before age sixty, to the insured plaintiff himself, such payments of benefit in any or either event to be made in a lump sum, wherein and whereby plaintiff was fully insured and protected under such group policy of insurance and certificate issued thereunder in the amount above specified, as more fully set out hereinafter.

Such certificate so issued this plaintiff contains provisions taken from the said group policy, and among others, the following:

> The Connecticut General Life Insurance Company of Hartford, Connecticut, certifies that it has issued a policy of Co-operative Group Life Insurance to Gulf Oil Corporation of Pennsylvania and/or Subsidiary and/or Affiliated Companies and subject to the terms and conditions of said policy numbered G-5039-R, executed and delivered in the Commonwealth of Pennsylvania, John Boseman, an employee, is insured under Schedule B of said policy for the sum of Four Thousand Dollars, subject to increase as provided on page two hereof, payable in case of death in accordance with attached beneficiary rider, or in case of permanent total disability, occurring before age sixty, to the insured.
>
> Schedule B.
>
> The following table applies to each employee who is insured under Schedule B, and shows the total amount of insurance in force on such em-

ployee according to salary class at the completion of the respective periods of continuous service.

The salary class of each employee is determined initially by monthly salary which is in effect on the date the insurance on such employee becomes effective as follows:

Salary class 1-B—Employees receiving salary of less than $150.00 per month.

Salary class 2-B—Employees receiving salary of $150 or over but less than $250 per month.

Salary class 3-B—Employers receiving salary of $250 or over but less than $450 per month.

Salary class 4-B—Employees receiving salary of $450 or over but less than $650 per month.

Salary class 5-B—Employees receiving salary of $650 or over per month.

Completed Years of Continuous Service		Salary Class 1-B	Salary Class 2-B	Salary Class 3-B	Salary Class 4-B	Salary Class 5-B
1	Amount of insurance	$2,000	$3,000	$5,500	$9,500	$13,500
2	Amount of insurance	2,250	3,250	5,750	9,750	13,750
3	Amount of insurance	2,500	3,500	6,000	10,000	14,000
4	Amount of insurance	2,750	3,750	6,250	10,250	14,250
5	Amount of insurance	3,500	5,000	9,500	14,500	19,500
6	Amount of insurance	3,750	5,250	9,750	14,750	19,750
7 or more	Amount of insurance	4,000	5,500	10,000	15,000	20,000

Total disability: Any employee shall be deemed totally disabled within the meaning of policy G-5039-R if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation.

Permanent Total Disability: If said total disability began before age sixty, and presumably during the life of such employee, shall be deemed permanently and totally disabled within the meaning of policy G-5039-R.

The amount of insurance payable in the event of permanent total disability shall be the amount due at the time such disability began.

Benefits: Immediately upon receipt of proof satisfactory to the Company that any insured person has become permanently totally disabled, as defined above, the Company will, in lieu of all other benefits and options provided in policy G-5039-R, pay to the insured employee the amount of insurance in force on the life of such employee hereunder.

And in this connection plaintiff represents that the defendant is fully apprised of and is familiar with all the terms and conditions contained both in the said group policy and the certificate issued him under such group policy.

Plaintiff, John Boseman, alleges that Certificate No. R23558, issued him by Connecticut General Life Insurance Company under Policy G-5039-R, was delivered to him in Jefferson County, Texas, by the Gulf Refining Company, and that he executed an order authorizing his employer, the Gulf Refining Company, of Jefferson County, Texas, to deduct the premiums for his insurance in advance from his wages, and that

such authorization was executed by him to his said employer in Jefferson County, Texas.

6.

Plaintiff, John Boseman, represents unto the court that at the time of the execution and delivery to him of the certificate under said group policy of insurance, above referred to, that he was employed by and in the employ of the Gulf Refining Company in Jefferson County, Texas, the said Gulf Refining Company being one of the companies to whom the Group Policy G-5039-R was issued by the Connecticut General Life Insurance Company, and that the said Certificate No. R23558 was issued to him as an employee of Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies, and that same was issued to him under the said Group Policy G-5039-R, thereby insuring the said John Boseman against death and permanent total disability. That plaintiff immediately began paying his premiums for such insurance to defendant through his employer, the Gulf Refining Company, and that such premiums were deducted from his wages regularly, and that he continued making such premium contributions during his employment with the said Gulf Refining Company and that all the payments of himself and his employer have been duly paid and discharged, and that the said group policy and the individual certificate issued him thereunder insured and protected him at the time of his total permanent disability hereinafter alleged.

7.

Plaintiff alleges that while in the employment of the said Gulf Refining Company he sustained an injury to his left eye, that he has suffered a material loss of vision therein and the same is the cause of constant pain and discomfort to him; that he sustained a severe injury to his back and left side of his chest, and that he is unable to exert himself in any manner without suffering pain in his lower back and left side, and he further alleges that he was operated on for a hernia on the left side and that a hernia on the right side appeared thereafter, that he suffers pain in the abdomen and inguinal region, that he is unable to stoop over or to do any straining, lifting or any heavy work, that he was and is suffering from diabetes, chronic bronchitis and syphilis, that he suffers constant pain in the chest and lungs and from difficult breathing and shortness of breath, that he has lost weight and his entire physique has been materially weakened and his health undermined, all of which disabilities have rendered him totally disabled, and that such total disability is permanent and he is prevented thereby from pursuing any occupation for wages or profit. He alleges that his permanent total disability began before he attained the age sixty and while he was insured with defendant, Connecticut General Life Insurance Company.

Plaintiff alleges that he was born March 18, 1892, at New Iberia, Louisiana.

8.

Plaintiff alleges that in accordance with the terms and provisions of the group policy and his certificate and in accordance with the statutes of the State of Texas with respect thereto, he gave notice of his total and permanent disability and submitted proof thereof to defendant upon blanks furnished him by the defendant for such purpose. He further alleges that he made demand of defendant for payment of the total and permanent disability benefits under the said group policy and his certificate and that such demand for payment of total and permanent disability benefits was made more than thirty days prior to the filing of this suit, and he alleges that in the event such demand for payment and the proof submitted to defendant were not made in strict accordance with the terms of such group policy and certificate, that the defendant received the same, both the proof as submitted, and the demand for payment of the total and permanent disability benefits knowing that it was an attempt upon the part of this defendant to comply with the terms of this group policy and certificate, and by such acceptance thereof waived any other or further or different proof and demand, and plaintiff hereby notifies the defendant to produce such proof as submitted by him and the written demand for payment as made by him, upon a trial of this cause, and in the event the same are not produced, secondary evidence thereof shall be offered. That defendant, Connecticut General Life Insurance Company, has failed

and refused and still fails and refuses to pay plaintiff the amount of total and permanent disability benefits to which he is entitled under the said group policy and the certificate issued him under such group policy.

9.

By reason of the premises above set forth, defendant, Connecticut General Life Insurance Company, became bound and liable to pay plaintiff under Group Policy G-5039-R and Certificate No. R23558, the sum of Four Thousand ($4,000.00) Dollars, with interest thereon at the rate of six per cent per annum from the date proof was received by defendant.

10.

The said plaintiff further represents that he has complied with each and all of the requirements, conditions and provisions of said contract of group insurance and the certificate issued him thereunder, and after having done so, made proper legal demand upon defendant for payment in accordance with its said contract, and the defendant, having failed and refused to pay the same within thirty days after such demand being made therefor, became bound and obligated itself to pay plaintiff, in addition to the principal amount of said certificate, the sum of 12% damages, in addition thereto, together with reasonable attorneys' fees for the collection of said sums, as provided by law, and the plaintiff shows the court that it was necessary to secure the services of attorneys for the collection thereof, and

he shows that the necessary and reasonable attorneys' fees for the collection of such amounts is the sum of One Thousand ($1,000.00) Dollars, and that plaintiff has employed for such purposes the law firm of Howell & Howell, of Jefferson County, Texas, a partnership composed of G. L. and Leon P. Howell, and has contracted to pay them such reasonable attorneys' fees, and by reason of the facts herein stated defendant is further obligated to pay the said sum of One Thousand ($1,000.00) Dollars for and as reasonable attorneys' fees.

In this connection, plaintiff, John Boseman, alleges that upon his completion of the required period of service in the employment of the Gulf Refining Company which made him eligible, as prescribed in Group Policy G-5039-R, for insurance with Connecticut General Life Insurance Company in the amount of Four Thousand ($4,000.00) Dollars, he thereupon applied for such insurance through the Gulf Refining Company, and he alleges that he executed an order, in compliance with said group policy, authorizing the Gulf Refining Company to deduct the premiums therefor in advance from his wages. Plaintiff further alleges that such authorization was made by him in Jefferson County, Texas, and in conformity therewith and at the request of the said Gulf Refining Company, the Connecticut General Life Insurance Company issued the said John Boseman Certificate No. R23558 in the amount of Four Thousand ($4,000.00) Dollars and that such individual certificate issued him as aforesaid by the Connecticut General Life Insurance Company was delivered to

plaintiff in Jefferson County, Texas, by his employer, the said Gulf Refining Company, thereby completing the group insurance contract in Jefferson County, Texas. Plaintiff alleges that pursuant to such authorization, the Gulf Refining Company deducted the premiums for his insurance in advance from his wages and that such deductions were made by the said Gulf Refining Company in Jefferson County, Texas. The said John Boseman represents that all his dealings and negotiations with the Connecticut General Life Insurance Company in the matter of his insurance were made in Jefferson County, Texas, and that the same were made through the Gulf Refining Company and that the said Connecticut General Life Insurance Company was at all times material hereto, authorized to pursue the business of life, health and accident insurance in the State of Texas, and that the Gulf Refining Company of Port Arthur, Jefferson County, Texas, was the agent of Connecticut General Life Insurance Company; that the said Gulf Refining Company took plaintiff's application for insurance with the Connecticut General Life Insurance Company under Group Policy G-5039-R, as heretofore shown, that the said Gulf Refining Company had plaintiff execute the authorization for the payment of premiums in compliance with the said group policy, that the said Gulf Refining Company requested the Connecticut General Life Insurance Company to issue plaintiff the individual certificate and that upon the issuance of such certificate the said Gulf Refining Company delivered the same

to plaintiff in Jefferson County, Texas. Petitioner further alleges that the said Gulf Refining Company collected premiums on his insurance with the said Connecticut General Life Insurance Company and that the said Gulf Refining Company was engaged in the business of soliciting insurance, procuring certificates of insurance, presenting and delivering certificates of insurance, completing contracts of insurance and collecting premiums thereon in the State of Texas, and more particularly in the case of this plaintiff at Port Arthur, Jefferson County, Texas, and in all respects insofar as the necessity for completing the contract of group insurance under which the individual certificate was issued plaintiff, the said Gulf Refining Company was an agent of the Connecticut General Life Insurance Company.

Wherefore, plaintiff prays that the defendant, Connecticut General Life Insurance Company, be duly cited to answer this petition by serving such citation, together with a certified copy of this petition, upon the Commissioner of Insurance for the State of Texas or any member of the Board of Insurance Commissioners, at Austin, Travis County, Texas, and he prays that upon a final trial hereof he have judgment against the defendant for the principal amount of Four Thousand ($4,000.00) Dollars, with interest thereon at the rate of six per cent per annum from the date proof was received by defendant, and for twelve per cent of the said principal amount with interest as damages for failure to pay within the time provided by law, and the further sum of One Thousand ($1,000.00) Dollars

for and as reasonable attorneys' fees, for all costs of suit, and for such other and further relief, both general and special, at law and in equity, to which the plaintiff may be entitled.

HOWELL & HOWELL,
Attorneys for Plaintiff.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Co. In the District Court of Jefferson County, Texas. Plaintiff's Original Petition. Filed April 20th, 1934. R. E. Cowan, Clerk District Court of Jefferson County, Texas. W. J. Bergman, Deputy.

Endorsed:

At Law 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court in and for the Eastern District of Texas, Beaumont Division. By Susie Kerr, Deputy.

Petition for Removal by Connecticut General Life Insurance Company.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226

John Boseman,

vs.

Connecticut General Life Insurance Company.

Petition for Removal of Cause to the United States District Court for the Eastern District of Texas, Beaumont Division, Sitting at Beaumont, Jefferson County, Texas.

Comes now Connecticut General Life Insurance Company, of Hartford, Connecticut, a private corpora-

tion, duly incorporated under and by virtue of the laws of the State of Connecticut, with its principal place of business in Hartford, Hartford County, Connecticut and a resident and citizen of the State of Connecticut, and domiciled in such state (said Company being named as defendant in this cause) and appearing specially herein for the sole purpose of presenting this its petition for removal of this cause to the United States District Court for the Eastern District of Texas, Beaumont Division, sitting at Beaumont, Jefferson County, Texas, respectfully shows, in support of its petition, the following:

1.

The above entitled and numbered suit has been brought in this court and is now pending herein.

2.

That said action is of a civil nature at law and the matter and amount in dispute exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, as is further shown by plaintiff's petition filed herein.

3.

That the controversy in said suit now is, and at the time of the commencement of this suit was, between citizens of different states; and that your petitioner, Connecticut General Life Insurance Company of Hartford, Connecticut, the defendant in the above entitled and numbered suit, was at the time of the commence-

ment of said suit in this county, and still is a resident of and a citizen of the State of Connecticut, with its principal place of business in the County of Hartford, and a non-resident of the State of Texas, and that the plaintiff, John Boseman, was at the commencement of this suit, and still is, a resident and citizen of the County of Jefferson, State of Texas.

4.

That said action is one of which the District Courts of the United States are given original jurisdiction in that the original petition filed by plaintiff, John Boseman, requests a sum in excess of Three Thousand ($3,000.00) Dollars; and that this is a controversy between citizens of different states, to-wit: John Boseman, a citizen of the State of Texas, and Connecticut General Life Insurance Company, of Hartford, Connecticut, a citizen of the State of Connecticut.

5.

The time within which your petitioner is required by the laws of the State of Texas and the rules of this court to answer or plead to the original petition, the only pleadings filed by plaintiff, John Boseman, in the above entitled and numbered cause, has not as yet expired.

6.

Your petitioner presents herewith a bond heretofore filed with the clerk of this court, with good and sufficient surety, conditioned that it will enter in the

District Court of the United States for the Eastern District of Texas, Beaumont Division, same being the division of such district to which suits in this county are returnable, within thirty (30) days from the date of the filing of this petition, a certified copy of the record in this suit, and of all proceedings in this court in this suit, and further conditioned that it will pay all costs that may be awarded by the said District Court of the United States for the Eastern District of Texas, Beaumont Division, against it in case the said court shall hold this suit was wrongfully or improperly removed thereto.

7.

Prior to the filing of this petition, and prior to the filing of said bond, hereinbefore described, for the removal of this cause, written notice of its intention to file the same was given by petitioner to the plaintiff as required by law, and a true copy of same with proof of service of same is attached hereto.

8.

The petitioner in presenting this petition makes a special appearance in this court for the sole and exclusive purpose of presenting this its petition for removal of said cause to the United States District Court, and in presenting same petitioner expressly reserves its right to contest and object to form and service of process made in this cause, and does here and now allege that same is insufficient under the laws of the

State of Texas, and under the laws of the United States, to require this defendant to appear and answer in this court, or the Federal District Court of the United States of the Eastern District of Texas, Beaumont Division.

9.

This petition and the affidavit hereto are made by the Connecticut General Life Insurance Company of Hartford, Connecticut, defendant herein, duly acting by and through its attorney of record, Major T. Bell, a resident and citizen and duly licensed lawyer of the State of Texas, who resides in Beaumont, Jefferson County, Texas, and who is duly authorized by and on behalf of said Connecticut General Life Insurance Company of Hartford, Connecticut, to make, execute and present this its petition for removal and the affidavit thereto.

Wherefore, your petitioner prays that this court proceed no further herein, except to make an order of removal as required by law and to accept said surety and bond and approve said bond and order and cause the record herein to be removed to the District Court of the United States within and for the Beaumont Division of the Eastern District of Texas, according to the statute in such cases made and provided.

Dated this the 28th day of May, A. D., 1934.

MAJOR T. BELL,
Attorney for Petitioner.

The State of Texas, County of Jefferson.

Major T. Bell, being duly sworn, states that he is the attorney of record for the petitioner, Connecticut General Life Insurance Company of Hartford, Connecticut, and that he is duly authorized by said petitioner to make, execute and present this petition and affidavit in its behalf and that he, Major T. Bell, does so present same, acting under such authority and authorization; and that he has read the foregoing petition and that same is true and correct of his own knowledge.

Major T. Bell.

Sworn to and subscribed before me, the undersigned authority, by Major T. Bell, well known to me, in Beaumont, Jefferson County, Texas, on this the 28th day of May, A. D., 1934.

O. R. Gross,
Notary Public in and for
Jefferson County, Texas.

(Seal)

Endorsed: No. 43226. In the 58th District Court of Jefferson County, Texas. John Boseman vs. Connecticut General Life Insurance Company. Petition for Removal. Filed May 26, 1934. R. E. Cowan, Clerk District Court, Jefferson County, Texas. By L. A. Baker, Deputy.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Notice of Intention to Remove and Service Thereof.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

To John Boseman, Plaintiff, or Messrs. Howell & Howell, His Attorneys of Record:

Please take notice that the Connecticut General Life Insurance Company, defendant in the above entitled and numbered cause, will at or before 9 A. M. on the 28th day of May, A. D., 1934, file in the clerk's office of the District Court of Jefferson County, Texas, in which said suit is now pending, its petition and its bond for removal of said cause from the said District Court of Jefferson County, Texas, to the District Court of the United States in and for the Eastern District of Texas, Beaumont Division; and upon filing of said petition and bond, the defendant will present and call to the attention of the District Court of Jefferson County, Texas, 58th Judicial District, the said petition and bond and move said District Court of Jefferson County, Texas, at ten o'clock A. M., on May 28, 1934, or as soon thereafter as the business of the court will permit, for an order of removal of said action and suit to the District Court of the United States in and for

the Eastern District of Texas, Beaumont Division. The said motion for removal is upon the grounds stated in said petition. At which time and place you may be present if you so elect.

Copies of said petition and bond are served herewith.

Dated this the 21st day of May, A. D., 1934.

MAJOR T. BELL,
Attorney for Petitioner,
404 Gilbert Building.
Beaumont, Texas.

The foregoing notice, together with copies of the petition and bond for removal were served upon and accepted by us, attorneys for plaintiff, on this the 25th day of May, A. D., 1934.

HOWELL & HOWELL,
Attorneys for Plaintiff.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Company. Notice of Removal. Filed May 28, 1934. R. E. Cowan, Clerk District Court of Jefferson County, Texas. By L. A. Baker, Deputy.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Removal Bond and Approval Thereof.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Know all men by these presents: That we, Connecticut General Life Insurance Company, a private corporation duly incorporated under and by virtue of the laws of the State of Connecticut, having its principal place of business in Hartford, Hartford County, Connecticut, as principal, and Hartford Accident & Indemnity Company, a private corporation incorporated under and by virtue of the laws of the State of Connecticut, with its principal place of business in Hartford, Hartford County, Connecticut, and duly licensed by the State of Texas to execute bonds of this character as surety in said State, as surety, are held and firmly bound unto John Boseman, plaintiff in the above entitled and numbered cause, his heirs, executors, administrators and assigns, in the penal sum of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we and each of us bind ourselves, our successors, receivers and assigns, jointly and severally, by these presents.

The conditions of this obligation are that: whereas the said Connecticut General Life Insurance Company has applied by petition to the District Court of Jefferson County, State of Texas, 58th Judicial District, for the removal of the above entitled cause, from the said District Court of Jefferson County, State of Texas, 58th Judicial District, to the District Court of the United States for the Eastern District of Texas, Beaumont Division;

Now, therefore, if the said Connecticut General Life Insurance Company shall enter in the said District Court of the United States for the Eastern District of Texas, Beaumont Division, within thirty (30) days from the date of filing of its petition for such removal a certified copy of the record in said suit, and shall well and truly pay all of the costs that may be awarded by said Federal District Court if it shall hold that said suit was wrongfully and improperly removed thereto, then this obligation will be void; otherwise it will remain in full force and effect.

Signed and executed in Hartford, Hartford County, Connecticut, this the 11th day of May, A. D. 1934.

Connecticut General Life Insurance Company, Principal.
By R. K. Metcalf,
Hartford Accident & Indemnity Company, Surety.
By E. H. Chevey,
Its Attorney in Fact.

Approved and accepted this the 28th day of May, A. D. 1934.

GEO. C. O'BRIEN,
Judge of the District Court of Jefferson County, Texas, 58th Judicial District.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Company. Bond for Removal. Filed May 28, 1934. R. E. Cowan, Clerk District Court of Jefferson County, Texas. By L. A. Baker, Deputy.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Order of Removal.

In the District Court of Jefferson County, Texas, 58th Judicial District.

No. 43226.

John Boseman,

vs.

Connecticut General Life Insurance Company.

On this the 28th day of May, A. D. 1934, came on for hearing upon petition of Connecticut General Life Insurance Company, the defendant in the above entitled and numbered cause, for an order removing this cause to the District Court of the United States for the Eastern District of Texas, Beaumont Division, and it ap-

pearing to the court that the defendant has filed its petition and bond for such removal in due form within the time required, and it being further shown to the court that the notice required by law of the filing of said bond and petition had prior to the filing thereof been served upon the plaintiff herein, which notice the court finds is sufficient and in accordance with the requirements of the statutes; and it appearing to the court that this is a proper cause for removal to the said District Court of the United States for the Eastern District of Texas, Beaumont Division, the court does hereby and now accept and approve said bond and does order this cause to be removed to the District Court of the United States for the Eastern District of Texas, Beaumont Division, sitting at Beaumont, Jefferson County, Texas; and that all other proceedings of this court be stayed; and the clerk is hereby directed to make up the record in said cause for transmission to said court forthwith.

GEO. C. O'BRIEN,
Judge Presiding.

Endorsed: No. 43226. John Boseman vs. Connecticut General Life Insurance Company. Order of Removal. Recorded Vol. 20, page 179 Civil Minutes District Court of Jefferson County, Texas.

Endorsed:

At Law No. 1468. Filed June 26, 1934. F. A. King, Clerk United States District Court. By Susie Kerr, Deputy.

Plaintiff's Trial Amendment to Original Petition.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

No. 1468 *at Law.*

John Boseman,

VS.

Connecticut General Life Insurance Company.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the plaintiff, John Boseman, and after leave of court first being had and obtained, files this his Trial Amendment:

In connection with Paragraph 7 of plaintiff's Original Petition it is alleged that such permanent total disability commenced and accrued on and prior to the 8th day of October, 1932, or in the alternative, such permanent total disability commenced and accrued on and prior to the 30th day of March, 1933, but that in either event such permanent total disability commenced, accrued and was consummated while plaintiff's insurance with the defendant, Connecticut General Life Insurance Company, was in full force and effect under Policy G-5039-R and the certificate issued to the plaintiff thereunder.

Wherefore, premises considered, plaintiff prays for the same relief heretofore prayed for in his Original Petition, and for such other and further relief as he may be justly entitled.

HOWELL & HOWELL,
Attorneys for Plaintiff.

Endorsed:

No. 1468 at Law. In the District Court of the United States in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Co. Trial Amendment. Filed November 12th, 1934. F. A. King, Clerk U. S. District Court.

Defendant's Second Amended Original Answer.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Now comes the defendant, Connecticut General Life Insurance Company, in the above styled and numbered cause, with leave of court first being had and obtained, and files this, its Second Amended Original Answer, in lieu of its First Amended Original Answer heretofore filed herein, and in answer to Plaintiff's Petition filed herein says:

1.

Defendant demurs and excepts generally to Plaintiff's Petition filed herein and says that the matters and things therein contained, in the manner and form as therein set forth, are insufficient in law for him to maintain his cause of action; and of this defendant prays judgment of the court.

2.

Subject to the foregoing, defendant specially excepts to Paragraph 5 of Plaintiff's Petition on file herein, for the reason that the allegations therein contained are vague, indefinite, and general, and do not set forth any specific date upon which plaintiff became totally and permanently disabled.

3.

Subject to the foregoing, defendant specially excepts to the allegations contained in the Second Paragraph of Section 10 of Plaintiff's Petition on file herein, wherein plaintiff alleges that the Gulf Refining Company was engaged in the business of soliciting insurance, etc., for the reason that said allegations are mere conclusions of the pleader and no fact or facts are alleged, showing an engagement in the insurance business by the Gulf Refining Company.

4.

Subject to the foregoing, defendant further specially excepts to the allegations contained in the Second Paragraph of Section 10 of Plaintiff's Petition on file herein, for the reason that said allegations are vague, general and indefinite and no allegations of fact are made, showing the type or character of the agency alleged to exist, nor the authority, if any, of said agent.

5.

Now comes the defendant, Connecticut General Life Insurance Company, in the above styled and numbered

cause, and denies each and every allegation in the Plaintiff's Petition contained and says that the same is not true and demands strict proof thereof; and of this it puts itself upon the Country.

6.

Further answering herein, this defendant specially denies that the plaintiff, John Boseman, was at any time while he was insured under the contract of insurance in question totally and permanently disabled, within the meaning of said term, as defined in said policy, but on the contrary defendant says that the said plaintiff was not disabled, but at all times material hereto, up to and including October 7th, 1932, was able to perform the kind and character of manual labor which he had been doing for years prior to the termination of his employment with the Gulf Refining Company.

7.

Subject to the foregoing, this defendant says that plaintiff's employment was terminated on October 7th, 1932; that Policy G-5039-R contained the following provision:

"No claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice for such disability to the company during the said period of employment or within sixty (60) days thereafter."

That Policy G-5039-R further specifically provided that the "company" should designate the Connecticut General Life Insurance Company; that the plaintiff herein did not give notice to this defendant of any claim of any character under Policy G-5039-R during the period of his employment within sixty (60) days after the termination of such; that for this additional reason the plaintiff is not entitled to recover any amount in this suit.

8.

Further answering herein, this defendant says that it is entitled to have this policy and all conditions thereof interpreted under and by virtue of the laws of the State of Pennsylvania or the State of Connecticut, and not in the State of Texas; that Policy G-5039-R was issued upon an application made by the Gulf Oil Corporation of Pennsylvania from its Pittsburgh, Pennsylvania, office and directed to the Connecticut General Life Insurance Company at Hartford, Connecticut; that said application was signed in Pittsburgh, Pennsylvania, and specifically requested that the policy be issued in Pittsburgh and the Commonwealth of Pennsylvania, and that it be governed by the laws of that Commonwealth; that said application was forwarded to the Hartford, Connecticut, office of this defendant and acting upon said application, this defendant did upon April 1st, 1932, sign and issue, at its Hartford, Connecticut, office said Policy G-5039-R; that said Master Policy so numbered was thereafter de-

livered to the Gulf Oil Corporation in the State of Pennsylvania at Pittsburgh; that all negotiations for Policy G-5039-R, leading to the execution of said contract, as well as all acts in executing said contract, took place either in the State of Pennsylvania or the State of Connecticut, and no part of same took place in the State of Texas, or any other state than those two named; that the Gulf Oil Corporation of Pittsburgh, Pennsylvania, handles all transactions in reference to said policy from its Pittsburgh, Pennsylvania, office with this defendant at its Hartford, Connecticut, office; that all certificates issued under said policy were and are issued in Hartford, Connecticut, and at the time of the issuance of such, this defendant does not know where the employee in whose name they were or are issued, was or is then located or residing; that such certificates are thereafter delivered by the Hartford office of this defendant by mail to the office of the Gulf Oil Corporation at Pittsburgh, Pennsylvania; that all premiums upon said policy and certificates are payable and are paid by the Gulf Oil Corporation from its Pennsylvania office to the Hartford, Connecticut, office of this defendant; that no part of the transactions with reference to the said policy and certificate, or any matter pertaining thereto were or are handled with the employee by the Connecticut General Life Insurance Company, but instead, they are handled with the Gulf Oil Corporation at its Pittsburgh, Pennsylvania, office; that the Gulf Oil Corporation is incorporated under and by virtue of the laws of the State of Pennsylvania,

and has the Home Office in Pittsburgh in that state; that the Connecticut General Life Insurance Company is incorporated under and by virtue of the laws of the State of Connecticut and has its principal office and place of business in Hartford in said state; that the Connecticut General Life Insurance Company is not doing an insurance business, nor has it ever done such, in the State of Texas, and maintained no agent therein for the purpose of this policy, or for the purpose of any other insurance business; that because of such this policy is entitled to be interpreted under the laws of the State of Connecticut or the State of Pennsylvania, or both.

9.

For further answer herein, this time particularly with reference to the claim for attorneys' fees and penalties, this defendant says that in view of the allegations made in the foregoing paragraph to the effect that Policy G-5039-R was and is a contract entered into in the State of Connecticut and the State of Pennsylvania, and since neither under the laws of Connecticut nor the laws of Pennsylvania are attorneys' fees and penalties allowed and permitted in a case and claim of this character to the plaintiff and/or his attorney, to be paid by the defendant, but that instead, the plaintiff and/or his attorney, cannot recover penalties and/or attorneys' fees from the defendant under the laws of either of said states, therefore, the plaintiff is not entitled for this additional reason to recover any at-

torneys' fees and penalties in this suit, if he is entitled to recover any amount at all.

10.

Further answering herein, this defendant says that the clause in the policy sued upon requiring written notice of disability suffered by an employee during the period of his employment or within sixty days thereafter, which clause is quoted verbatim in this answer, is in all things valid and enforcible under the laws of the State of Pennsylvania, where the insurance contract was made and entered into and the plaintiff herein having failed to give such notice, as required by the terms of the policy, should not be allowed to recover herein and to allow a recovery herein on the part of the plaintiff, in the face of his failure to give notice, within the time required, would be in violation of Amendment 14 to the United States Constitution, Subdivision 1 thereof, which provides against the deprivation of any person's property without due process of law, and would be contrary to Subdivision 1, Section 14, of the United States Constitution, which prohibits any state from abridging the privileges or immunities of citizens of the United States, this being a contract under the laws of Pennsylvania involved, and would be a violation of Subdivision 1 of the Fourteenth Amendment of the United States Constitution by denying this defendant the equal protection of the law, this being a Pennsylvania contract and this defendant being a citizen of the State of Connecticut, and would further be

a violation of the contract impairment clause of the United States Constitution, this being a Pennsylvania contract involved in this suit, and this defendant being a citizen of the State of Connecticut.

11.

Further answering herein, defendant says that the contract sued upon being clearly a Pennsylvania contract and this defendant being a citizen of the State of Connecticut, to enforce the Texas statute with reference to attorneys' fees and penalties, such Texas statute being Article 4735, Revised Civil Statutes, 1925, would be in violation of Amendment 14 of the United States Constitution, Subdivision 1 thereof, which provides against the deprivation of any person's property without due process of law, and would be contrary to Subdivision 1, Section 14, of the United States Constitution, which prohibits any state from abridging the privileges or immunities of citizens of the United States, this being a contract under the laws of Pennsylvania involved, and would be in violation of Section 1 of the Fourteenth Amendment of the United States Constitution by denying this defendant the equal protection of the law, this being a Pennsylvania contract and this defendant being a citizen of the State of Connecticut, and would be in violation of the contract impairment clause of the United States Constitution, this being a Pennsylvania contract involved in this suit, and this defendant being a citizen of the State of Connecticut.

Wherefore, this defendant prays that plaintiff take nothing by his suit and that defendant do have and recover its costs in this cause expended, and in addition hereto, defendant specifically retains and relies upon its cross-action heretofore filed, and in addition to relief prayed for in this answer, respectfully prays the court to grant to it the equitable relief asked for in its cross-action.

DUFF & CECIL,
OBGAIN, CARROLL & BELL,
Attorneys for Defendant.

The State of Texas, County of Jefferson.

Before me, the undersigned authority, on this day personally appeared Lamar Cecil, who, being duly sworn, says that he is one of the attorneys for the Connecticut General Life Insurance Company and that the matters contained in the foregoing Answer are, according to the best of his knowledge, true and correct, and that the matters contained therein are based upon information furnished him by the Connecticut General Life Insurance Company and/or its duly qualified and acting officials and officers, none of whom are presently within the jurisdiction of this court.

Lamar Cecil.

Sworn to and subscribed before me, the undersigned authority, on this the 4th day of November, A. D. 1935.

E. B. Williford,
Notary Public in and for Jefferson County, Texas.

(Seal)

Endorsed:

At Law No. 1468. In the United States District Court in and for the Eastern District of Texas, at Beaumont. John Boseman vs. Connecticut General Life Insurance Company. Defendant's Second Amended Original Answer. Filed November 4th, 1935. Helen Mathews, Clerk U. S. District Court. By Catherine Wharton, Deputy.

Verdict of the Jury.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Verdict of the Jury.

We, the jury, find a verdict in favor of the plaintiff.

Austin A. Kelly,
Foreman.

Endorsed:

No. At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. Verdict of Jury. Filed November 12, 1934. F. A. King, Clerk United States District Court.

Additional Caption.

Be it further remembered that at a regular term of the District Court of the United States for the Eastern District of Texas, in the Fifth Circuit, begun and holden at Beaumont, Texas, on the 28th day of October A. D. 1935, and which term adjourned on March 2, A. D. 1936, the Honorable Randolph Bryant, United States District Judge for the Eastern District of Texas, presiding, the following proceedings were had in the case At Law No. 1468, John Boseman vs. Connecticut General Life Insurance Company:

Findings of Fact and Declarations of Law and Defendant's Exceptions Thereto.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Be it remembered that on November 12, 1934, the defendant, Connecticut General Life Insurance Company, filed, presented and urged a motion for instructed verdict in the cause above captioned and thereupon the court reserved action upon such motion when presented at the conclusion of the evidence and prior to any argument or charge to the jury; and thereupon prior to any argument or charge to the jury the Connecticut General Life Insurance Company on November 12, 1934, filed

and presented its motion in open court for finding of facts and declarations of law by the court upon the issues so reserved, and subject to which the verdict of the jury was accepted; and that when such was done the court also reserved action upon the motion of the Connecticut General Life Insurance Company for findings of fact and declarations of law; and said motion of the Connecticut General Life Insurance Company for findings of fact and declarations of law having been continuously urged since such time; the court now in open court acts upon same and refuses to find the following facts, as requested by the defendant:

(1) The court refuses to find "that group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania, and is subject to interpretation in this court in accordance with the laws of Pennsylvania."

The court does further refuse to make the following declarations of law requested by the defendant:

(1) That group policy G5039R and the plaintiff's insurance thereunder were and are subject to interpretation in accordance with the laws of the State of Pennsylvania; and that the failure of the plaintiff to give notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment defeats a recovery by him in this cause; but instead, this court declares the law to the contrary.

(2) This court further refuses to declare as a law, as requested by the defendant, that attorneys' fees and penalties cannot be collected by the plaintiff in this suit because the contract involved is a Pennsylvania contract; but instead, the court declares to the contrary that the contract was a Texas contract and that attorneys' fees and penalties can be collected by the plaintiff under Article 4736 of the Revised Civil Statutes of Texas.

To which action of the court in refusing to make the findings of fact as above shown, and in refusing to declare the law as stated above, the defendant in open court, upon such court's refusal on December 26, 1935, prior to rendition of judgment in this cause, excepted to each and every refusal of the court concerning such findings, and declarations, and was allowed its exceptions, which are ordered filed.

Done this the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding

However, in connection with the defendant's request for specific findings of fact and declarations of law, the court does make and file, in open court prior to rendition of judgment, in response to such requests, and in response to defendant's motion for peremptory instruction, and in response to defendant's motion for judgment *non obstante veredicto*, the following findings of fact and declarations of law:

FINDINGS OF FACT.

(1) That group policy G5039R, and plaintiff's insurance thereunder, was and is a contract of the State of Texas, and is subject to interpretation in this court in accordance with the laws of the State of Texas.

(2) That the plaintiff herein wholly failed and omitted to give any notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment, which occurred on October 8, 1932.

(3) That the provision found in group contract G5039R, and the certificate issued to John Boseman thereunder, which required notice of a claim for total and permanent disability under same within sixty days after termination of employment of John Boseman, was valid under the laws of Pennsylvania.

(4) However, the fact that such provision for notice was valid under the laws of the State of Pennsylvania does not defeat this claim and cause, since same is to be interpreted under and in accordance with the laws of the State of Texas.

(5) That no attorneys' fees or penalties in a case of this character could be collected under the laws of the State of Pennsylvania.

(6) However, attorneys' fees and penalties can be collected in this suit by the plaintiff, since it is to be interpreted and tried in accordance with the laws of the State of Texas.

CONCLUSIONS OF LAW.

(1) That the provision for notice of claim within sixty days by the plaintiff was invalid under the laws of the State of Texas and therefore not enforceable in this suit.

(2) That Article 4736 of the Revised Civil Statutes of Texas entitled the plaintiff to attorneys' fees and penalties in this suit and is applicable to this cause.

To the findings set forth in subdivisions 1, 4 and 6 under "Findings of Fact" above and the declarations of law, each and all, declared by the court, the defendant then and there in open court prior to rendition of judgment excepted to each and all of same and was allowed its exceptions.

Done this the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law No. 1468. John Boseman vs. Connecticut General Life Ins. Co. United States District Court in and for the Eastern District of Texas, Beaumont Division. Findings of Fact and Declarations of Law. Filed December 26, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Order Granting Plaintiff's Motion for Judgment.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

On this the 26th day of December, A. D. 1935, came on to be considered plaintiff's, John Boseman, motion for judgment duly and timely filed in this cause, and after consideration thereof the court is of the opinion that same should be granted.

It is, therefore, ordered and decreed that plaintiff's motion for judgment be, and it is, in all things granted.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. Order Granting Plaintiff's Motion for Judgment. Filed December 27th, 1935. Helen Mathews, Clerk United States District Court. By Susie Kerr, Deputy.

Order Overruling Defendant's Motion for Judgment.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Be it remembered that on December 26, 1935, in open court, prior to the decision of the case above captioned by the judge and prior to rendition of judgment by the court in such matter, came on to be heard the motion of the defendant, Connecticut General Life Insurance Company, for judgment *non obstante veredicto* in its favor in the cause above captioned, said motion having been filed and presented to the court by the defendant on November 15, 1934, and continuously urged by the defendant since such time; and after due and proper notice to all the parties of and concerning such motion, and the court having considered said motion and each ground thereof, and being of the opinion that said motion by the Connecticut General Life Insurance Company for judgment in its favor as to all amounts sued for by the plaintiff, and its motion, in the alternative, for judgment in its favor as to the suit by the plaintiff for attorneys' fees and penalties, should each and all be overruled and refused, such is accordingly hereby done; to which action of the court the defendant, Connecticut General Life Insurance Company, then

and there in open court excepted and its exception is ordered entered of record, both as to the entire amount sued for by the plaintiff and as to the action of the court in overruling its motion for judgment against the plaintiff as to attorneys' fees and penalties sued for.

This the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law No. 1468. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. Order Overruling Defendant's Motion for Judgment. Filed December 26, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Judgment.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

On the 8th day of November, A. D. 1934, came on regularly to be heard the above entitled and numbered cause, and the plaintiff, John Boseman, ap-

peared in person and by his attorneys, and the defendant, Connecticut General Life Insurance Company, appeared by its attorneys, and whereupon, all parties announced ready for trial, and it was ordered by the court that hearing hereof proceed.

Whereupon, came a jury of twelve good and lawful men, consisting of Austin A. Kelley and eleven others, who were duly impaneled and sworn to try said cause, and said cause proceeded to trial; and the jury, after hearing the pleadings, the evidence, argument of counsel, and thereafter the charge of the court, retired to consider of their verdict; and after consideration thereof returned into open court on the 12th day of November, A. D. 1934, with their verdict as follows, to-wit:

> "We, the jury, find a verdict in favor of the plaintiff."

And it appearing to the court that the jury having found for the plaintiff and against the defendant, and that under such finding as made by the jury, and it further having been conclusively established: that plaintiff gave due notice and submitted due proof of his permanent total disability to the Connecticut General Life Insurance Company and the Gulf Refining Company; and that the plaintiff made demand upon the defendant more than thirty days prior to the filing of this suit, for payment of permanent total disability benefits under Certificate No. R-23558 and Policy No. G5039-R; and that the defendant failed to pay plain-

tiff such benefits within thirty days after demand being made therefor; and further that Policy No. G5039-R, upon which plaintiff's suit was predicated, was applied for and performed in Texas, and the final acts necessary to make the policy effective were performed in Texas, and that Policy No. G5039-R and the Certificate No. R-23558, issued him thereunder, is a Texas contract; and it further having been conclusively established that under the pleadings and undisputed testimony the plaintiff is entitled to recover One Thousand ($1,000.00) Dollars as reasonable attorney's fees; the plaintiff, John Boseman, is entitled to a judgment against the defendant, Connecticut General Life Insurance Company, in the sum of Four Thousand ($4,000.00) Dollars, the principal amount of the Certificate No. R-23558, and for One Thousand ($1,000.00) Dollars as reasonable attorney's fees, and for twelve (12%) per cent of the amount sued upon as penalty for defendant's failure to pay after demand for payment, or Four Hundred Eighty ($480.00) Dollars, making a total of Five Thousand Four Hundred Eighty ($5,480.00) Dollars.

It is, therefore, ordered, adjudged and decreed by the court that plaintiff, John Boseman, do have and recover of and from the defendant, Connecticut General Life Insurance Company, the sum of Five Thousand Four Hundred Eighty ($5,480.00) Dollars, with interest thereon at the rate of six (6%) per cent per annum until paid, said interest on the principal amount of

Four Thousand Dollars to commence on the 1st day of April, A. D. 1934, same being thirty days after proof of loss was submitted, together with all costs of suit, for which execution may issue as often and as many as may be necessary. It is further ordered, adjudged and decreed by the court that the officers of the court may have their execution against the defendant for their costs.

Entered this 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. Judgment. Filed December 27, 1935. Helen Mathews, Clerk United States District Court. By Susie Kerr, Deputy.

Bill of Exceptions.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

BILL OF EXCEPTIONS.

Be it remembered that upon the trial of the above styled and numbered cause before His Honor, Randolph

Bryant, then presiding, and the jury, which trial began on the 8th day of November, A. D. 1934, and during said trial the following proceedings were had, to-wit:

Appearance: Howell & Howell by Leon Howell, appearing for the plaintiff; Orgain, Carroll & Bell and Duff & Cecil by Lamar Cecil, appearing for the defendant.

By Mr. Howell: "Your Honor, we offer in evidence the certificate issued to John Boseman, dated April 1, 1932."

Mr. Cecil: "We object to that if it is offered for any purposes except as a means of identifying this man as one of the insured under group policy G5039R."

The Court: "Well, that is the only purpose for which it is offered?"

Mr. Howell: "That is all."

THE CERTIFICATE.

"This certificate is issued pursuant to the following provision of policy G5039R:

Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled, to whom payable, and the conversion privilege.

"THE CONNECTICUT GENERAL LIFE INSURANCE
COMPANY OF HARTFORD, CONNECTICUT
Certifies that it has issued a policy of
Cooperative Group Life Insurance
to
Gulf Oil Corporation of Pennsylvania
And/or Subsidiary and/or Affiliated Companies

and subject to the terms and conditions of said policy numbered G5039R executed and delivered in the Commonwealth of Pennsylvania

John Boseman
an employee

is insured under Schedule B of said policy for the sum of

Four Thousand Dollars

subject to increase as provided on page two hereof payable in case of death

In Accordance With Attached Beneficiary Rider.

....., the beneficiary or in case of permanent total disability, occurring before age 60, to the insured.

"If the beneficiary does not survive the employee, then payment shall as the Company may elect be made to the employee's widow or widower, or to the surviving children in equal shares or to the executor or administrator of the insured employee.

"If any beneficiary is a minor his share may be paid, at the discretion of the Company, to such person as is, in the opinion of the Company, caring for and supporting him.

"Payment to any person set out in the above paragraphs will release the Company from all further liability to the extent of such payment.

"Any employee may name a new beneficiary or new method of payment of proceeds of this insurance

by filing with his superior a written request therefor. These changes become effective only upon receipt of the written request at the Home Office of the Company.

"'Conversion Privilege. If written application and payment of premium are made by any employee to the Company within 31 days after termination of his employment for any reason whatsoever, the Company will issue, without evidence of insurability, any policy of life insurance applied for which is customarily issued by it, except Term Insurance, in an amount not greater than the amount of the employee's protection under this group policy (G5039R) at the time of such termination. The new policy will be issued at the attained age of the employee and for the premium applicable to the class of risk to which such employee then belongs. This conversion privilege shall be in lieu of all other benefits under this policy (G5039R).'

"Application for such conversion should be made to the Connecticut General Life Insurance Company, Hartford, Connecticut. This insurance is not in effect during the 31 days granted for conversion, as it automatically ceases at termination of employment.

Connecticut General Life
Insurance Company,
F. B. Wilde,
Secretary.

All certificates under Policy G5039 and/or Policy G5545 are hereby made null and void as of March 31, 1932, and this certificate under Policy G5039R is issued in lieu thereof.

No. R 23558. Effective April 1, 1932.

(Page 2)

Schedule B.

"The following table applies to each employee who is insured under Schedule B and shows the total amount of insurance in force on such employee according to salary class at the completion of the respective periods of continuous service.

"The salary class of each employee is determined initially by monthly salary which is in effect on the date the insurance on such employee becomes effective as follows:

"Salary class 1-B—Employee receiving salary of less than $150.00 per month

Salary class 2-B—Employees receiving salary of $150 or over but less than $250 per month

Salary class 3-B—Employees receiving salary of $250 or over but less than $450 per month

Salary class 4-B—Employees receiving salary of $450 or over but less than $650 per month

Salary class 5-B—Employees receiving salary of $650 or over per month.

Completed Years of Continuous Service		Salary Class 1-B	Salary Class 2-B	Salary Class 3-B	Salary Class 4-B	Salary Class 5-B
1	Amount of insurance	$2,000	$3,000	$5,500	$9,500	$13,500
2	Amount of insurance	2,250	3,250	5,750	9,750	13,750
3	Amount of insurance	2,500	3,500	6,000	10,000	14,000
4	Amount of insurance	2,750	3,750	6,250	10,250	14,250
5	Amount of insurance	3,500	5,000	9,500	14,500	19,500
6	Amount of insurance	3,750	5,250	9,750	14,750	19,750
7 or more	Amount of insurance	4,000	5,500	10,000	15,000	20,000

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

"If the monthly salary of any insured employee received in January or July of any year, is increased so as to transfer such employee to a higher salary class, the amount of insurance on such employee shall be automatically increased, on the February 1 or August 1 immediately following the change in salary class, to the amount for which he is eligible in the new salary class.

"If the monthly salary of any insured employee received in January or July of any year, is decreased, nevertheless his insurance salary class, under the above table, shall not be affected by such decrease.

"If employee through neglect, or otherwise, fails to pay his premium in advance, his insurance is automatically cancelled at the end of the period for which the premium is paid. If an employee's insurance is cancelled other than by termination of employment, it can be reinstated thereafter only upon submission at the employee's expense, of evidence of insurability satisfactory to the Insurance Company.

"An employee absent from work for any cause, must immediately notify his superior in writing, giving reason for his absence, otherwise, he will be considered as having left the employee and his insurance will be cancelled. When his employment ceases it will be necessary for the employee to apply for refund of payments made in advance on account of premium.

"If a certificate is lost, application should be made immediately for duplicate.

"If an employee is transferred from one company, department or district to another company, department or district, he must follow his case through in order to protect his insurance.

(Page 3)

"Total Disability: Any employee shall be deemed totally disabled within the meaning of policy G5039R if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation.

"Permanent Total Disability: If said total disability began before age sixty, and presumably during the life of such employee will prevent the employee from pursuing any occupation for wages or profit, such employee shall be deemed permanently and totally disabled within the meaning of policy G5039R.

"In addition to all other causes of permanent total disability, the entire and irrecoverable loss of the sight of both eyes, or the loss of the use of both hands, or of both feet, or of one hand and one foot, shall constitute permanent total disability within the meaning of policy G5039R, provided such loss occur before age sixty.

"The Company shall have the right and the opportunity to examine the person of such employee when and so often as it may reasonable require during the pendency of claim hereunder.

"The amount of insurance payable in the event of permanent total disability shall be the amount due at the time such disability began.

"Benefits: Immediately upon receipt of proof satisfactory to the Company that any insured employee has become permanently totally disabled, as defined above, the Company will, in lieu of all other benefits and options provided in policy G5039R, pay to the insured employee the amount of insurance in force on the life of such employee hereunder.

"Upon approval by the Employer any permanent total disability claim shall be paid in instalments as requested. If paid in instalments interest at the rate of not less than 3½% per annum will be allowed on the unpaid balance.

"If, in the opinion of the Company, such permanent total disability is due to or accompanied by mental incapacity, payment may be made to the person who, in the opinion of the Company, is caring for and supporting such disabled employee. Payment so made shall release the Company from all liability to the extent of such payment.

"Death During Disability: If any employee, whose claim for permanent total disability benefits hereunder is approved by the Company,

(1) dies before lump sum payment is made or before instalment payments begin, the insurance shall be paid as a death claim as provided in the policy; or

(2) dies while receiving instalment payments, the balance of said instalments shall be commuted at the

rate of 3½% compound interest per annum and paid as a death claim as provided in the policy.

"Termination of Insurance: Upon termination of employment of any insured employee, his insurance shall be cancelled as follows except as hereinafter provided:

1. Employees who upon termination of employment request a refund of the unearned premium shall have insurance cancelled upon termination of employment.

2. Employees who do not request a refund of premium but have not paid for the insurance beyond the end of the month in which termination of employment occurs shall have the insurance continued to the end of that month.

3. Employees who do not request a refund of premium and have paid for the insurance beyond the month in which termination of employment occurs shall have the insurance continued to the end of the month following the month in which termination of employment occurs.

"If any employee cancels his insurance, it shall cease immediately.

"Continuity of Service, provided Payments are made by Employees as due:

"If any employee leaves the Employer's service except for temporary lay-off on account of lack of work and enters the service of any other corporation, firm or individual even temporarily, his employment shall thereupon terminate.

"If any employee is temporarily laid off on account of lack of work and his insurance is cancelled, his insurance may be reinstated upon his return to active service and his employment record will be considered continuous from the original employment date, notwithstanding the fact that he may have been working in the meantime.

"In the case of any employee absent from duty due to ill health, or other disabling cause and not employed elsewhere during such absence, he shall be considered as continuing in the Employer's service unless and until the Employer informs the Company that his employment has terminated.

"No payment for death of any employee while insured under policy G5039R shall be made unless written notice thereof has been presented to the Company within one year after termination of active service of such employee with the Employer and no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice of such disability to the Company during the said period of employment or within 60 days thereafter.

"No action shall be brought under policy G5039R unless it be commenced within two years next after the termination of the employment of the insured employee."

ENDORSEMENT ON CERTIFICATE.

"The Connecticut General Life Insurance Company
of
Hartford, Connecticut
Cooperative Group Life Insurance
Issued to the
Gulf Oil Corporation of Pennsylvania
for the benefit of the
employees of Itself
and its Subsidiaries

"Certificate No. R 23558
issued under and subject to the terms
and conditions of policy No. G5039R
To
John Boseman

"Method of Claim Settlement.

Note: Entries in this register are to be made only by The Connecticut General Life Insurance Company at its Home Office in Hartford, Conn.

"In case of a claim the proceeds of this certificate are to be paid as follows:

"In monthly instalments of $100 each to each beneficiary.

F. B. Wilde,
Secretary for Connecticut Gen.
Life Ins. Co."

RIDER ATTACHED TO CERTIFICATE.

"Connecticut General Life Insurance Company
Hartford, Conn., April 1, 1932.

"Beneficiary Rider to be attached to and form a part of Certificate No. R 23558 issued to John Bose-

man who is insured under policy No. G5039R issued by the Connecticut General Life Insurance Company to Gulf Oil Corporation of Pennsylvania.

"Any sums payable under the above policy by reason of the death of the above insured shall be paid to:

"3/8 to Nancy Boseman, mother of the Insured, if living; otherwise to Mamie Boseman, wife of the Insured, if living; otherwise payment shall be made in accordance with the terms of the policy.

"5/8 to Mamie Boseman, wife of the Insured, if living; otherwise to Nancy Boseman, mother of the Insured, if living; otherwise payment shall be made in accordance with the terms of the policy.

Connecticut General Life Insurance Company,
F. B. Wilde,
Secretary."

Mr. Howell: We next offer in evidence proof of loss made by John Boseman on the 25th day of April, 1933, and forwarded to the Connecticut General Life Insurance Company, and in due course of mail received by Connecticut General Life Insurance Company, which proof of loss is on the form furnished by the Connecticut General Life Insurance Company, executed by John Boseman and witnessed by G. L. Howell, which proof of loss we limit for the purpose of only showing that such proof was furnished and not the contents."

PROOF OF LOSS.

"CONNECTICUT GENERAL LIFE INSURANCE COMPANY

Hartford, Connecticut.

Proof of Total and Permanent Disability.

1. (a) Name of Policyholder or Certificateholder, John Boseman.
   (b) Present address, 834 Hegget Avenue, Port Arthur, Texas.
2. Policy number G5039R, Certificate number R23558, Amount, $4,000.
3. Date and place of birth, March 18, 1892 at New Iberia, La.
4. Name and address of all physicians consulted for any cause within the last five years, Dr. Klatt, Galveston, Texas; Dr. Ray Orrill, Port Arthur, Texas.
5. Occupation when disability began—Fire Department, charging fire extinguishers and foam tanks and digging out water lines for repair.
6. Date finally gave up all work, Laid off on account of slack work Oct. 7, 1932. Recalled to employment and worked March 30, 1933. Reported to work and was examined by company physician, Dr. Long, on March 31, 1933, and pronounced unfit for further service on account of physical condition.
7. Cause of disability, Re-occurrence of old hernia, defective vision caused from alum dust in eyes, injury to side and back from a fall, probably complicated by disease.

8. What other insurance providing disability protection did you carry at the commencement of disability? None.

Because of the above disability, claim is now made for the Protection in the event of Total and Permanent Disability as provided in the contract.

By furnishing this blank the Company shall not be held to admit the validity of any claim or waive the breach of any condition of the policy.

I hereby certify and declare all the above statements and answers to be full, complete, and true to the best of my knowledge.

Signed at Beaumont, Texas, this 25th day of April, 1933.

(Signed) John Boseman,
Signature of Claimant or Guardian.

Witness
G. L. Howell."

Mr. Howell: "We next offer in evidence under the same qualifications the attending physician's statement which accompanied the proof of loss executed by John Boseman, executed by Dr. F. W. Sutton on March 1, 1934."

PHYSICIAN'S STATEMENT.

"Attending Physician's Statement.

1. Name of Insured, John Boseman.
2. Present Residence, Port Arthur, Texas.
3. Date of first visit in present disability, April 25, 1933.

4. Names and Addresses of any physicians who were in attendance prior to your connection: Dr. Stewart, Port Arthur, Tex.; Dr. Orrill, Port Arthur, Tex.
5. Date on which first symptoms of present illness appeared, 1931.
6. Exact date when this claimant finally gave up all business activities: March 30, 1933.
7. History of onset including symptoms and signs to date: Several injuries. Increasing weakness; nocturia; thirst; cough with expectoration; blurred vision; Objective: Heavy glycosuria; rales over both lungs; enlarged epitrochlear glands.
8. Diagnosis and present symptoms of injury, infirmity or disease causing disability: Diabetes; chronic bronchitis; syphilis. (Symptoms above.)
9. Is the Insured absolutely totally disabled and in your opinion will he be permanently, continuously and wholly prevented for life from pursuing any and all gainful occupations? Yes.
10. If this disability will not be permanent, approximately when do you think claimant might be able to take up some useful work? Permanent.

Date Mar. 1, 1934

Sign here (signed) F. W. Sutton, M. D.
Address, Beaumont, Texas.

Graduate of Univ.
of Texas Med. Col."

Mr. Howell: We next offer in evidence letter dated April 12, 1933, addressed to Mr. Charles R.

Stevenson, Gulf Refining Company, Port Arthur. Texas, signed by G. L. Howell of the firm of Howell & Howell, which letter we offer only for the purpose of showing that notice was given to the Connecticut General Life Insurance Company of the claim of John Boseman. It is further agreed that this notice was in due course forwarded by Mr. Stevenson of the Gulf Refining Company to the Connecticut General Life Insurance Company, and that it was duly received by the Connecticut General Life Insurance Company."

LETTER TO MR. CHAS. R. STEVENSON.

"Howell & Howell
Attorneys at Law
San Jacinto Bldg.
Beaumont, Texas

April 12, 1933

"In Re: Group Policy No. 5039R
Certificate No. R23558
John Boseman vs. Connecticut General Life Ins. Co.

Mr. Charles R. Stevenson
care Gulf Refining Company
Port Arthur, Texas

Dear Sir:

John Boseman, colored, has placed with us for adjustment a claim for permanent total disability, arising under the above policy and certificate.

Kindly send us the necessary form on which to present this claim.

Thanking you for your attention to this matter.

Yours truly,

Howell & Howell,
(signed) By G. L. Howell."

Mr. Howell: "We next offer in evidence letter dated March 6, 1934, addressed to the Connecticut General Life Insurance Company of Hartford, Connecticut, with reference to the claim of John Boseman against the Connecticut General Life Insurance Company under policy G5039R and certificate R23558, in which letter demand is made upon the Connecticut General Life Insurance Company for the payment of the benefits under the certificate issued to John Boseman through policy G5039R, which letter was written by the firm of Howell & Howell and signed by Charles R. Howell, a member of the firm, and was received by the Connecticut General Life Insurance Company on March 6, 1934, which letter we offer solely for the purpose of showing that demand was made for the payment of the claim."

LETTER TO CONNECTICUT GENERAL LIFE INS. CO.

"Howell & Howell
Attorneys at Law
Suite 412-414 San Jacinto Bldg.
Beaumont, Texas

March 6, 1934

"In Re: John Boseman vs. Connecticut General Life Insurance Co. Group Policy G5039R, Cert. R23558.

"Connecticut General Life Insurance Company, Hartford, Connecticut

Gentlemen:

On the 1st inst., we sent Mr. Charles R. Stevenson of the Gulf Refining Company, Port Arthur, Texas,

on your approved form, the proof of John Boseman's permanent and total disability for forwarding to your company.

"Demand is hereby made for payment of total permanent disability benefits, in accordance with the terms and provisions of the contract of insurance, and the law of this State applicab e to insurance of this character.

Yours truly,

Howell & Howell,
(signed) By Chas. A. Howell.

CAH:MJ

cc—Mr. Chas. R. Stevenson
Care Gulf Refining Company
Port Arthur, Texas

Received
March 9, 1934."

Mr. Howell: We offer in evidence a copy of policy G5039R, which is admitted by both parties to be a true and correct copy of the policy G5039R.

Group Policy G5039R.

"In accordance with application effective April 1, 1932, Policy G5039 and Policy G5545 are cancelled as of March 31, 1932, and this policy is issued in lieu thereof. No benefits for permanent total disability or death shall be paid hereunder on any employee on whom death or permanent total disability benefits are paid under Policy G5039 or Policy G5545.

"CONNECTICUT GENERAL LIFE INSURANCE COMPANY
Hartford, Connecticut
(hereinafter called the Company)

specifies in this policy the terms and conditions under which it insures certain employees of

Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies.
(Hereinafter called the Employer)

"Immediately upon receiving due proof that any employee, while insured under this policy, has died, the Company will pay, subject to the conditions of this policy, the amount of insurance on his life as determined by the section headed 'Amount of Insurance.' Any payments made on the insurance of such employee on account of permanent total disability, as hereinafter provided, shall be deducted from the amount payable at death.

"In case of death the insurance will be paid in a lump sum, unless otherwise requested as hereinafter provided, to the person named by the employee as beneficiary to receive the insurance provided the name of the beneficiary is on file with the Company. If there is no name on file or if the beneficiary does not survive the employee, then payment shall as the Company may elect be made to the employee's widow or widower, or to the surviving children in equal shares or to the executor or administrator of the insured employee.

"If any beneficiary is a minor his share may be paid, at the discretion of the Company, to such person as is, in the opinion of the Company, caring for and supporting him.

"Upon approval by the Employer any death benefits shall be paid in instalments as requested. If paid in instalments interest at the rate of not less than 3½% per annum will be allowed on the unpaid balance.

"If any beneficiary dies while receiving instalment payments the remaining instalments, unless otherwise disposed of, shall be commuted at the rate of 3½% compound interest per annum and paid, in a lump sum, to the executors, administrators or assigns of the beneficiary.

"Payment to any person set out in the above paragraphs will release the Company from all further liability to the extent of such payment.

"This policy is issued for a term of one year from April 1, 1932, 12:01 A. M. Standard Time at the Employer's address in consideration of the application of the Employer, the payment of a binding premium of one dollar and the payment of such further premiums as are provided herein. This policy is issued and accepted subject to all conditions and privileges set forth on the subsequent pages hereof and which are hereby made a part of this contract.

"In witness whereof the Connecticut General Life Insurance Company has caused this policy to be signed at its office in the City of Hartford, the 1st day of April, 1932.

F. B. Wilde,
Secretary.

R. W. Huntington,
President

M. Remington,
Registrar.

"Co-operative Policy; One Year Renewable Term; Non-Participating; Conversion Option; Permanent Total Disability; Experience Rating Plan; Table of Rates Guaranteed Against Increase for One Year.

(Page 2.)

PERMANENT TOTAL DISABILITY.

"Total Disability. Any employee shall be deemed totally disabled within the meaning of this policy if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation.

"Permanent Total Disability. If said total disability began before age sixty, and presumably during the life of such employee will prevent the employee from pursuing any occupation for wages or profit, such employee shall be deemed permanently and totally disabled within the meaning of this policy.

"In addition to all other causes of permanent total disability, the entire and irrecoverable loss of the sight of both eyes, or the loss of the use of both hands, or of both feet, or of one hand and one foot, shall constitute permanent total disability within the meaning of this policy, provided such loss occur before age sixty.

"The Company shall have the right and the opportunity to examine the person of such employee when and so often as it may reasonably require during the pendency of claim hereunder.

"The amount of insurance payable in the event of permanent total disability shall be the amount due at the time such disability began.

"Benefits. Immediately upon receipt of proof satisfactory to the Company that any insured employee has become permanently totally disabled, as de-

fined above, the Company will, in lieu of all other benefits and options provided in this policy, pay to the insured employee the amount of insurance in force on the life of such employee hereunder.

"Upon approval by the Employer any permanent total disability claim shall be paid in instalments as requested. If paid in instalments interest at the rate of not less than 3½% per annum will be allowed on the unpaid balance.

"If, in the opinion of the Company, such permanent total disability is due to or accompanied by mental incapacity, payment may be made to the person who, in the opinion of the Company, is caring for and supporting such disabled employee. Payment so made shall release the Company from all liability to the extent of such payment.

"Death During Disability. If any employee, whose claim for permanent total disability benefits hereunder is approved by the Company,

(1) dies before lump sum payment is made or before instalment payments begin, the insurance shall be paid as a death claim as provided on the first page of this policy, or

(2) dies while receiving instalment payments, the balance of said instalments shall be commuted at the rate of 3½% compound interest per annum and paid as a death claim as provided on the first page of this policy.

(Page 3.)

"EMPLOYEES ELIGIBLE.

Eligibility of employees for insurance under Schedule A shall be determined as follows:

"Each employee in service on April 1, 1932, who was insured on March 31, 1932, under policy G5039 but was not insured under policy G5545 and who has been in service one year and 91 days or over on April 1, 1932, becomes eligible on April 1, 1932.

Eligibility of employees for insurance under Schedule B shall be determined as follows:

"Each employee in service April 1, 1932, who was insured under policy G5545 on March 31, 1932, in accordance with the schedule of insurance effective on November 1, 1929, becomes eligible on April 1, 1932.

"Each employee in service April 1, 1932, who was not insured under policy G5545 on March 31, 1932, and on April 1, 1932, has been in service (1) less than one year becomes eligible upon completion of one year of continuous service; (2) one year but less than one year and 91 days becomes eligible on April 1, 1932.

"Each employee entering service after April 1, 1932, becomes eligible upon completion of one year of continuous service.

Eligibility of employees for insurance under Schedule C shall be determined as follows:

"Each employee in service April 1, 1932, who was insured on March 31, 1932, under policy G5545 in accordance with the schedule effective April 1, 1925,

and did not elect the schedule effective November 1, 1929, becomes eligible on April 1, 1932.

"No employee shall be eligible for insurance under more than one of the above schedules; however any employee eligible for insurance under Schedule A or Schedule C may become eligible for insurance under Schedule B by presenting, at his own expense, evidence of insurability satisfactory to the Company and his insurance under any other schedule will be automatically cancelled on the day his insurance becomes effective under Schedule B.

"Election of Insurance. An employee may elect insurance under this policy by completing any form of payroll deduction order approved by the Employer.

"Employees Insured. Each employee electing the insurance before becoming eligible, will be insured automatically on the day he becomes eligible.

"Each employee electing the insurance on the day he becomes eligible or within 90 days thereafter will be insured immediately upon electing the insurance; provided, however, that any employee becoming eligible in accordance with paragraph numbered (2) under 'Eligibility of employees for insurance under Schedule B' above who does not elect the insurance within 90 days of the day on which he completed one year of service will be insured only upon presenting at his own expense, evidence of insurability satisfactory to the Company.

"Any employee not electing the insurance within 90 days of the day he becomes eligible or re-applying

after terminating his insurance for any reason other than termination of employment, will be insured only upon electing the insurance and presenting, at his own expense, evidence of insurability satisfactory to the Company. The insurance on such employee shall be effective when he is accepted for insurance by the Company.

(Page 4)

"Amount of Insurance. The amount of insurance on each insured employee is determined by (a) completed years of continuous service and (b) classification by amount of monthly salary as follows:

Schedule A.

"The following table applies to each insured employee who is eligible under Schedule A and shows the total amount of insurance in force on such employee at the completion of the respective periods of continuous service:

Completed years of continuous service		
1	Amount of insurance	$1,000
2	Amount of insurance	1,250
3	Amount of insurance	1,500
4	Amount of insurance	1,750
5	Amount of insurance	2,000
6	Amount of insurance	2,250
7 or more	Amount of insurance	2,500

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

Schedule B.

"The following table applies to each insured employee who is eligible under Schedule B and shows the total amount of insurance in force on such employee according to salary class at the completion of the respective periods of continuous service.

"The salary class of each employee is determined initially by monthly salary based upon the fixed pay which is in effect on the date the insurance on such employee becomes effective as follows:

Salary Class	Employees Receiving Salary of
1-B	less than $150 per month
2-B	$150 or over but less than $250 per month
3-B	$250 or over but less than $450 per month
4-B	$450 or over but less than $650 per month
5-B.	$650 or over per month

Completed Years of Continuous Service		Salary Class 1-B	Salary Class 2-B	Salary Class 3-B	Salary Class 4-B	Salary Class 5-B
1	Amount of insurance	$2,000	$3,000	$5,500	$9,500	$13,500
2	Amount of insurance	2,250	3,250	5,570	9,750	13,750
3	Amount of insurance	2,500	3,500	6,000	10,000	14,000
4	Amount of insurance	2,750	3,750	6,250	10,250	14,250
5	Amount of insurance	3,500	5,000	9,500	14,500	19,500
6	Amount of insurance	3,750	5,250	9,750	14,750	19,750
7 or more	Amount of insurance	4,000	5,500	10,000	15,000	20,000

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

"If the monthly salary of any insured employee, based on fixed pay received in January or July of any year, is increased so as to transfer such employee to a higher salary class, the amount of insurance on

such employee shall be automatically increased, on the February 1 or August 1 immediately following the change in salary class, to the amount for which he is eligible in the new salary class.

"If the monthly salary of any insured employee received in January or July of any year, is decreased, nevertheless his insurance salary class, under the above table, shall not be affected by such decrease.

(Page 5)

Schedule C.

"The following table applies to each insured employee who is eligible under Schedule C and shows the total amount of insurance in force on such employee according to salary class at the completion of the respective periods of continuous service:

"The salary class of each employee is determined initially by monthly salary based upon the fixed pay which is in effect on the date the insurance on such employee becomes effective as follows:

Salary Class	Employees Receiving Salary of
1-C	less than $250 per month
2-C	$250 or over but less than $450 per month
3-C	$450 or over but less than $650 per month
4-C	$650 or over per month

Completed Years of Continuous Service	Salary Class 1-C	Salary Class 2-C	Salary Class 3-C	Salary Class 4-C
1 Amount of insurance	$2,000	$3,500	$6,000	$8,500
2 Amount of insurance	2,250	3,750	6,250	8,750
3 Amount of insurance	2,500	4,000	6,500	9,000
4 Amount of insurance	2,750	4,250	6,750	9,250
5 Amount of insurance	3,000	4,500	7,000	9,500
6 Amount of insurance	3,250	4,750	7,250	9,750
7 or more Amount of insurance	3,500	5,000	7,500	10,000

"Any increase in amount of insurance due to length of service is automatically effective upon the completion of the required period of service.

"If the monthly salary of any insured employee, based on fixed pay received in January or July of any year, is increased so as to transfer such employee to a higher salary class, the amount of insurance on such employee shall be automatically increased to the amount for which he is eligible in the new salary class on the February 1 or August 1 immediately following the change in salary class.

"If the monthly salary of any insured employee received in January or July of any year, is decreased, nevertheless his insurance salary class, under the above table, shall not be affected by such decrease.

"If the salary classification under which an employee was insured under Policy G5545 on March 31, 1932, was higher than the salary classification of such employee as determined by the terms and conditions of this policy, such employee shall have the privilege of electing insurance hereunder according to the salary classification under which he was insured under Policy G5545 on March 31, 1932, provided such election is made on or before July 1, 1932.

(Page 6)

PREMIUMS.

"Renewal. At the end of the first and of each subsequent policy year this policy may be renewed by the payment of premiums as herein provided.

"Determination of Average Premium Rate. On the effective date of this policy and on each annual policy renewal date thereafter an average annual premium rate will be established by dividing the premium computed on the basis of the Table of Rates provided in the paragraph entitled 'Premium Rates' at the respective ages, nearest birthday, of the employees then insured, by the amount of insurance then in force. If premiums are payable other than annually the average semiannual, quarterly or monthly premium is determined by multiplying the average annual premium by .505, .255 or .0858 1-3 respectively. The average premium rate determined will be used on all transactions during that year.

"Premium Payment. Premiums are due and payable monthly in advance at the Home Office of the Company in Hartford, Connecticut, but may be paid to an authorized agent of the Company in exchange for a receipt signed by the Secretary and countersigned by the agent. Such premiums shall be calculated by multiplying the amount of insurance in force on the respective premium due dates by the average premium rate as determined in the above paragraph.

"In addition to the binding premium there shall be due to the Company immediately, the balance, if any, of the first premium.

"On additional or increased insurance, premium charge will commence on the 1st day of the month

following the date such insurance is effective. On insurance terminated premium charge will cease on the 1st day of the month following the date such termination is effective.

"Grace Period. If any premium is not paid when due, this policy shall cease, except that thirty-one days of grace will be allowed, without interest, for the payment of all premiums other than the binding premium.

"Premium Rates. The 'Table of One Year Premiums per $1000 Insurance' shown below is guaranteed for one year. At the end of each year experience ratings may be made effective on renewal premiums.

TABLE OF ONE YEAR PREMIUMS PER $1000 INSURANCE.

"The charge for Permanent Total Disability represents 1% of each premium below age 60.

Attained Age of Insured Nearest Birthday	Premium Per $1000	Attained Age of Insured Nearest Birthday	Premium Per $1000	Attained Age of Insured Nearest Birthday	Premium Per $1000	Attained Age of Insured Nearest Birthday	Premium Per $1000
15	$5.39	36	$ 6.92	58	$ 25.08	80	$142.09
16	5.47	37	7.11	59	27.12	81	153.12
17	5.57	38	7.32	60	29.39	82	164.95
18	5.65	39	7.56	61	31.82	83	177.54
19	5.76	40	7.85	62	34.45	84	191.08
20	5.87	41	8.18	63	37.33	85	205.46
21	5.97	42	8.58	64	40.44	86	220.68
22	6.08	43	8.99	65	43.83	87	236.69
23	6.14	44	9.49	66	47.47	88	254.04
24	6.21	45	10.02	67	51.45	89	272.25
25	6.27	46	10.62	68	55.72	90	291.52
26	6.31	47	11.30	69	60.35	91	311.27
27	6.35	48	12.04	70	65.34	92	333.61
28	6.38	49	12.88	71	70.74	93	355.10
29	6.40	50	13.78	72	76.56	94	377.59
30	6.43	51	14.78	73	82.82	95	402.51
31	6.45	52	15.80	74	89.57	96	426.64
32	6.48	53	17.09	75	96.82	97	460.01
33	6.56	54	18.43	76	104.65	98	474.71
34	6.65	55	19.87	77	113.06	99	518.49
35	6.76	56	21.47	78	122.01	100	583.08
		57	23.20	79	131.70		

(Page 7)

"General Provisions.

"Insurance Data:

"Census. The Employer shall at the beginning of each month notify the Company with respect to the termination of the insurance of those employees whose employment has terminated since the last previous notice and with respect to new employees becoming eligible for insurance. Notice regarding such termination and additions may be given by the Employer within a reasonable time after such changes in the status of the Group occur, and upon notice being given within that time, the changes in the insurance upon such cases shall be considered as having taken effect upon the dates when they were entitled to become effective according to the provisions set forth in the policy the same as if notice of such changes had actually been given in advance.

"Termination of Insurance. Upon termination of employment of any insured employee, his insurance shall be cancelled as follows except as hereinafter provided:

"1. Employees who, upon termination of employment, request a refund of the unearned premium shall have insurance cancelled upon termination of employment.

2. Employees who do not request a refund of premium but have not paid for the insurance beyond the

end of the month in which termination of employment occurs shall have the insurance continued to the end of that month.

3. Employees who do not request a refund of premium and have paid for the insurance beyond the month in which termination of employment occurs shall have the insurance continued to the end of the month following the month in which termination of employment occurs.

"If any employee cancels his insurance, it shall cease immediately.

"Continuity of Service provided Payments are made by Employees as due.

"If any employee leaves the Employer's service except for temporary lay-off on account of lack of work and enters the service of any other corporation, firm or individual even temporarily, his employment shall thereupon terminate.

"If any employee is temporarily laid off on account of lack of work and his insurance is cancelled, his insurance may be reinstated upon his return to active service and his employment record will be considered continuous from the original employment date, notwithstanding the fact that he may have been working in the meantime.

"In the case of any employee absent from duty due to ill health, or other disabling cause and not

employed elsewhere during such absence, he shall be considered as continuing in the Employer's service, unless and until the Employer informs the Company that his employment has terminated.

"In the case of employees in the Marine Department, inasmuch as for many of them no regular payroll is kept, they being signed up anew for each voyage and since owing to the inherent conditions of employment in that department there may be occasional gaps in the continuity of the employment of men who may nevertheless be rightly considered as being steadily in the Employer's service, continuous service shall be deemed to exist for employees in the Marine Department not on payroll provided they work for no other employer between the periods for which they sign 'Articles of Agreement' with the Employer.

(Page 8)

"Change of Beneficiary. Any employee may name a new beneficiary by completing the form provided by the Company for that purpose, such change to become effective only upon receipt of the completed form at the Home Office of the Company.

"Assignment. No assignment of any insurance shall be effective until it is approved by the Employer and a copy of such approved assignment filed at the Home Office of the Company. The Company will assume no responsibility for the validity of any assignment.

"Misstatement of Age. If the age of any employee has been misstated, the insurance payable will be the amount provided in the paragraph 'Amount of Insurance' but premium adjustments will be made so that the Employer shall pay the Company the actual premiums at the true age of the employee.

"Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled, to whom payable, and the following conversion privilege:

"Conversion Privilege. If written application and payment of premium are made by any employee to the Company within 31 days after termination of his employment for any reason whatsoever, the Company will issue, without evidence of insurability, any policy of life insurance applied for which is customarily issued by it, except Term Insurance, in an amount not greater than the amount of the employee's protection under this Group policy at the time of such termination. The new policy will be issued at the attained age of the employee and for the premium applicable to the class of risk to which such employee then belongs. This conversion privilege shall be in lieu of all other benefits under this policy.

"Incontestability. This policy shall be incontestable after one year from date of issue except for non-

payment of premiums; provided that no payment for death shall be made unless written notice thereof has been presented to the Company within one year after termination of active service of such employee with the Employer and no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice of such disability to the Company during the said period of employment or within 60 days thereafter.

"No action shall be brought under this policy unless it be commenced within two years next after the termination of the employment of the insured employee.

"Contract. The policy and the application of the Employer, copy of which is attached to and made a part of this policy, and the applications of the employees, if any, shall constitute the entire contract between the parties. All statements made by the Employer shall, in the absence of fraud, be deemed representations and not warranties and no statement shall be used in defense to a claim under this policy unless it is contained in the written application. Only the President or a Vice-President, Secretary or Assistant Secretary has power on behalf of the Company to make or modify this contract of insurance.

"This contract is issued and delivered in the City of Pittsburgh, in the Commonwealth of Pennsylvania and is governed by the laws of that Commonwealth.

(Page 9.)

APPLICATION (ATTACHED TO POLICY).

"The Gulf Oil Corporation of Pennsylvania (in behalf of itself and its subsidiaries, and affiliated companies) Employer under policies G5039 and G5545 issued by the Connecticut General Life Insurance Company of Hartford, Connecticut, hereby requests that the aforesaid policies be cancelled as of March 31, 1932, and that there be issued in lieu thereof policy G5039R, effective as of April 1, 1932, and that on and after April 1, 1932, only those employees who shall have complied with all the terms and conditions of policy G5039R, shall be insured. It is further requested that policy G5039R be issued in Pittsburgh, in the Commonwealth of Pennsylvania, and that it be governed by the laws of that Commonwealth.

"Dated at Pittsburgh, Pennsylvania, this 15th day of March, 1932.

Gulf Oil Corporation of Pennsylvania,
By (signed) J. F. Drake.

Witness:
(signed) H. L. Stone."

ENDORSEMENT ON POLICY G5039R.

"Co-operative Policy; One Year Renewable Term Non-Participating; Conversion Option; Permanent Total Disability; Experience Rating Plan; Table of Rates Guaranteed Against Increase For One Year.

Policy No. G5039R.

Connecticut General Life Insurance Company,
Hartford, Conn.

Co-operative Life Insurance
Policy
Issued to
Gulf Oil Corporation of
Pennsylvania and/or sub-
sidiary and/or affiliated
companies
of
Pittsburgh, Pennsylvania

Date April 1, 1932."

Mr. Howell: "We next offer in evidence the file marks on plaintiff's petition filed in the District Court of Jefferson County, Texas, and later removed to this court, showing it was filed on April 20, 1934."

File Marks on Plaintiff's Original Petition.

"No. 43226. In the District Court of Jefferson County, Texas. John Boseman vs. Connecticut General Life Insurance Company. Plaintiff's Original Petition. Filed April 20, 1934, R. E. Cowan, Clerk District Court, Jefferson County, Texas, by W. J. Bergman, Deputy."

Mr. Howell: "We next offer in evidence certified copy of permit issued to the Connecticut General Life Insurance Company to do business in the State of Texas from April 1, 1932, through February 28, 1933, together with a certificate of the Insurance Commissioner of the State of Texas."

Certified Copy of Permit.

"Certificate

State of Texas

Board of Insurance Commissioners

"It is hereby certified that the instrument which is hereunto attached is a true, full and correct copy of Certificate of Authority of the Connecticut General Life Insurance Company, Hartford, Connecticut, for the years ending February 28, 1926, 1928, 1930, 1932 and 1933, now on file in and forming a part of the records of this Department.

In witness whereof I have hereunto subscribed my name officially and have hereon impressed my seal of office at the City of Austin, in the State of Texas on this 21st day of March, A. D. 1934.

(signed) R. L. Daniel,
Chairman Board of Insurance Commissioners.

(Seal)

(Page 2)

"Certificate No. 162

The State of Texas Company No. 2377

Board of Insurance Commissioners

of the

State of Texas

"This is to certify that

Connecticut General Life Insurance Company

Hartford, Connecticut

has, according to sworn statement, complied with all requirements of law applicable thereto and is hereby authorized to pursue the business of

Life, Health & Accident

insurance within this State for the year ending February 28, 1933.

In witness whereof, I hereunto sign my name and affix my official seal at Austin, Texas, this 21st day of March, 1932.

(signed) W. A. Tarver,
(Seal) Chairman of Board."

DR. T. A. FEARS was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Agreement of counsel that Dr. T. A. Fears was a duly licensed, practicing and qualified physician:

"I gave John Boseman a physical examination, including his teeth, tonsils, head, chest, abdomen, examined his urine, prostate, and blood test, for the purpose of determining his physical condition, and found him suffering from diabetes, which is an incurable disease causing a general weakness of the entire system. Assuming that Boseman in 1931, the latter part of the year, commenced to suffer from general weakness, loss of weight, from excessive thirst, from excessive urination, giving such symptoms of the presence of either the early stages or the commencement of diabetes, and having found him to be suffering from diabetes at the time I examined him on November 6, 1934, it would be my opinion that he was suffering from diabetes in the latter part of 1931. With that condition of diabetes present he would be unable to do any manual labor requiring muscular effort and phys-

ical exertion, and any attempt to do such work would endanger his life. It is my opinion that he now is totally and permanently disabled and that such condition has existed since and prior to October 8, 1932."

MR. C. R. STEVENSON was then called as a witness on behalf of plaintiff, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Howell.

"Since December 16, 1929, I have held the official position of plant manager of the three Texas refineries, including the Port Arthur plant, with the Gulf Refining Company. I do not know of any of the arrangements made with the Connecticut General Life Insurance Company under the various group policies that were issued by it covering the employees of the Port Arthur plant; I know of the issuance of the policies and deductions from wages, and the payments of the contributory insurance that the employees bear. With reference to my familiarity with the present and past payment of claims, and how they are paid, to the beneficiaries of the employees—I will state that we receive from our Pittsburgh office Connecticut General Life Insurance Company checks made payable to beneficiaries, and disburse those checks to beneficiaries as received or to the estate of the beneficiaries. I do not recall that I have ever dis-

tributed any checks to the individuals themselves where they had qualified under the disability benefits, but I probably would if there were any. I have delivered checks in payment of claims against the Connecticut General Life Insurance Company in Texas."

(Stipulation as to Duration of Policy G5039R.)

The testimony of the witness was interrupted while it was stipulated between the counsel for the respective parties that master policy G5039R went into effect as to the plant at Port Arthur, Texas, at midnight on March 31, 1932, and was cancelled as to such plant and its employees on midnight, April 30, 1933.

Mr. Stevenson's testimony continued:

"Under group policy G5039R the employees of the Gulf Refining Company executed pay-roll deduction orders. After such were executed, pay-roll deductions were made at Port Arthur, Texas, from the employees who did hold certificates under that policy. As to what was done with those deductions I will state the remittances were made to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, to cover the deductions made as to the employees of the Port Arthur plant at Port Arthur, Texas. The employees of the Port Arthur plant who were insured under the prior two policies, to-wit, G5039 and G5545, made an appli-

cation to the Gulf Refining Company, applying for the cancellation of their insurance under said policies then in effect and applying for insurance under the new policy (G5039R) to be taken out. Those applications were made and executed in Port Arthur. I don't know what disposition was made of those applications."

Agreement Between Counsel that Gulf Refining Company Was Subsidiary or Affiliated Company of Gulf Oil Corporation of Pennsylvania.

It is agreed between attorneys for the respective parties and entered in the record that the Gulf Refining Company is a subsidiary or affiliated company with the Gulf Oil Corporation of Pennsylvania.

Cross Examination of Mr. Stevenson by Mr. Cecil.

"That insurance was a voluntary proposition and nobody was compelled to take it if they didn't want it. The employees did not pay all the premiums on group policy G5039R. Either the Gulf Refining Company or the Gulf Oil Corporation of Pennsylvania, I don't know which one, paid part of it. The employer contributed some of the premiums on the insurance covering the employees. As to the payroll deduction orders made by the employees, I, of course, had to have that as au-

thority to make those deductions from the men's wages. We could not deduct any sum from the wages unless the men authorized us. My office had no direct correspondence with the Connecticut General Life Insurance Company on any matter. Our dealings in regard to it are exclusively with Mr. H. J. Smith, Assistant Treasurer in Charge of Insurance, Gulf Refining Company, Pittsburgh, Pennsylvania. As to whether or not the Gulf Refining Company at Port Arthur maintains an insurance department headed by Mr. Gardiner for the benefit and aid of its employees who accepted and wanted and took out this insurance, I will state we attempted to look after the interests of our employees many of whom are ignorant men; they don't understand what could or should be done and we endeavor to explain to them. Our activities in regard to this insurance at Port Arthur, whatever activities we have are purely and absolutely for the aid and benefit of our employees. We do not act in any capacity to aid or benefit the Connecticut General Life Insurance Company. Our interests are with our employees there, and we handle any questions—if they want to change beneficiaries or come to us for counsel and advice—we act for our employees the best we can. They come to us with these various propositions or to someone of our force there in the office at Port Arthur. At their request we do act for them and

take those matters up with Mr. Smith of the Gulf Refining Company at Pittsburgh, Pennsylvania. As to what he does, I don't know. None of the employees of the Gulf Refining Company at Port Arthur act as agents for the Connecticut General Life Insurance Company. I have never done so and do not know of anyone else having done so. All of our correspondence and the correspondence of our office in regard to these matters is not with the Connecticut General Life Insurance Company, but with the Pittsburgh office."

Re-Direct Examination by Mr. Howell.

"I do identify the two letters you hand me; that is my signature. As to whether or not, when I state in there that I am reserving certain rights and defenses on behalf of the Gulf Refining Company to the Connecticut General Life Insurance Company, I was doing such under instructions I received from our Mr. Smith, I will state this was a form that I followed for years. I do not recall under what instructions it was received. Mr. Smith did write me that the Connecticut General Life Insurance Company had denied, or done this, or not done this or the other thing."

Plaintiff then offered in evidence the two letters identified by Mr. Stevenson heretofore, said letters being:

LETTERS OFFERED BY COUNSEL FOR PLAINTIFF DURING RE-DIRECT EXAMINATION OF MR. STEVENSON.

"Gulf Refining Company
Charles B. Buerger,
Vice-President

Port Arthur, Texas, April 15, 1933.

Refineries
Port Arthur, Texas
Fort Worth, Texas
Sweetwater, Texas

Chas. R. Stevenson,
Plant Manager

Messrs. Howell & Howell, Attorneys At Law,
San Jacinto Building,
Beaumont, Texas.

Dear Sirs:

"I have your letter of the 12th instant, relative to alleged total and permanent disability of John Boseman. As requested, I enclose herewith claim form, No. B-672. It is understood, of course, that by furnishing this blank neither the Gulf Refining Company nor the Connecticut General Life Insurance Company shall be held to admit the validity of any claim, or to waive the breach of any condition of the policy.

"If you decide to use this form, please return it, when fully executed, to this office for forwarding to the insurance company.

Yours very truly,

Enclosure. (signed) Chas. R. Stevenson."

"Gulf Refining Company.
Charles B. Buerger,
Vice-President

Port Arthur, Texas, March 2, 1934.

Refineries
Port Arthur, Texas
Fort Worth, Texas
Sweetwater, Texas

Chas. R. Stevenson,
Plant Manager

Messrs. Howell & Howell, Attorneys at Law,
San Jacinto Building,
Beaumont, Texas

Dear Sirs:

"Your letter of the 1st instant, relative to claim of John Boseman, does not state that you sent copy of the proof form to the Connecticut General Life Insurance Company, and we are therefore sending the form today to that company, through our Pittsburgh office. In the event we are advised of the insurance company's decision, we shall notify you promptly.

Yours very truly,

(signed) Chas. R. Stevenson."

Re-Cross Examination of Mr. Stevenson by Mr. Cecil.

"These certificates evidencing the fact certain employees were insured under one policy or the

other, particularly group policy G5039R, which our office delivered to the various employees who were entitled to them, came to us from our Pittsburgh office. They did not come to us from the Connecticut General Life Insurance Company."

Witness excused.

Mr. Howell: "Now, Mr. Cecil, in order that Mr. Vines can leave with Mr. Stevenson, will you stipulate that Mr. Vines, who is assistant treasurer of the Gulf Refining Company, in his capacity as assistant treasurer, during the life of the Master Policy, forwarded the premiums to the Gulf Oil Corporation, and they were in turn given to the Connecticut General Life Insurance Company?"

Mr. Cecil: "I won't stipulate what happened to them after they got to the Gulf Oil Corporation at Pittsburgh, Pennsylvania, because I don't know."

The Court: "Well, the only point you wish to bring out in that connection is that the company made proper deductions with this certificate against the pay which was due this plaintiff?"

Mr. Howell: "Yes, sir."

Mr. Cecil: "You mean the Gulf Refining Company?"

The Court: "Yes, sir."

Mr. Howell: "And that they took these with a large number of other deductions, and forwarded to their—"

The Court: "There isn't any controversy about that, is there?"

Mr. Cecil: "They were sent to Pittsburgh. I will be willing to admit the premiums were sent to Pittsburgh, Pennsylvania, to the office of the Gulf Oil Corporation of Pennsylvania."

Mr. Howell: "That is satisfactory. I will be glad to excuse both of these gentlemen, then."

MR. H. E. GARDINER was then called as a witness on behalf of the plaintiff, and after being duly sworn, testified as follows:

Direct Examination by Mr. Howell.

"The official position that I hold with the Gulf Refining Company is in the accounting department. I have under my supervision the insurance records of the Gulf Refining Company, in connection with the certificates or policies issued by the Connecticut General Life Insurance Company for John Boseman and all others. I have here the application of Boseman for insurance under group policy G5039R."

Mr. Howell: "I am introducing it all."

Mr. Howell then read to the jury the following instrument offered by him, being the instrument signed by John Boseman in connection with his insurance under group policy G5545 issued by the Connecticut General Life Insurance Company to the Gulf Oil Corporation

of Pennsylvania on April 1, 1925, and in force and effect until March 31, 1932, under which group policy G5545 John Boseman was issued, in accordance with its terms and provisions, until midnight of March 31, 1932:

"10/17/29. I hereby apply for group life insurance now or hereafter applicable to my class provided under the policy issued by the Connecticut General Life Insurance Company, and letter dated November 1st, 1929, to the Gulf Oil Corporation of Pennsylvania, agreeing to be bound by the rules governing this insurance, and authorize the Gulf Oil Corporation of Pennsylvania, and/or subsidiary or affiliated companies to deduct and advance necessary amounts per month from my pay to apply towards payment for my premium towards such insurance. I reserve the right to rescind this order in writing at any time. (signed) John Boseman. Witness, W. A. Lay."

Mr. Howell then read to the jury the following instrument secured from the witness, Mr. Gardiner:

"Application dated March 7, 1932, application No. R23558. I hereby apply for Cooperative Group Life Insurance in the amount applicable April 1, 1932, or thereafter, according to my salary classification, and length of continuous service, as provided for in policy No. G-5039-R, issued by the Connecticut General Life Insurance Company, Hartford, Connecticut, and dated April 1, 1932, effective

12:01 A. M., on said date, to the Gulf Oil Corporation of Pennsylvania, of Pittsburgh, Pennsylvania. In making this application, I agree to be bound by the rules governing this insurance, and I authorize the Gulf Oil Corporation of Pennsylvania, and/or subsidiary and/or affiliated companies to deduct in advance the proper amount per month from my pay to apply toward the premium of said insurance. I hereby accept as of March 31, 1932, the cancellation of my insurance protection under policy G-5039— and/or G-5545, and do release any claim thereunder, and I accept in lieu of said insurance protection the benefits granted under said policy G-5039-R. In case claim has heretofore been made by me or is made by me under said policy G-5039 and G-5545 prior to midnight, March 31, 1932, I agree that the above application for insurance is null and void, and any deduction which may have been made from my pay under the above authorization to be returned to me. (signed) by John Boseman. Witness by E. C. Hix.

"Received Certificate No. R-23558, under G-5039-R, signed by John Boseman, on 7/20/32."

(Mr. Gardiner's testimony continued.)

"The record that you have read is part of the permanent records of the Gulf Refining Company. It was the application and payroll deduction order under which John Boseman was issued a certificate under policy G5039R. I do not have

any other payroll deduction order relative to insurance from this man other than that one under group policy G5039R. A certificate was issued to John Boseman upon that application and that certificate was delivered to him at the Gulf Refining Company office in Port Arthur, Jefferson County, Texas. Payroll deductions were made from Boseman's wages at Port Arthur, Texas. I have here the employment record of John Boseman. These records show when he was first employed by the Gulf Refining Company, which date was July 24, 1916. Our records reflect that during the reduction of forces he was laid off on October 8, 1932, from the Gulf Refining Company. Our records reflect that on or about April 29, 1933, he was re-employed by the Gulf Refining Company and worked four and a half hours on the day of the 29th. Our records reflect the reason his employment was not continued was that according to agreement of employees he was to sign a certain release—I don't know what. As to whether or not that was a release of any kind of disability that he might have, well, I am not familiar with those releases. Dr. Long probably has those releases, I hardly think that the employment man there, Mr. Dubose, might have them.

"I have the employment records of John Boseman from March, 1932, up until October, 1932. It reflects that he lost some time from his employment but I can account for all but five days as to

the reason he was off; for this five days, I don't know; for the other days it was his regular days off. We were not operating under the code at that time. They were working forty hours a week, off on Saturdays and Sundays. Our records reflect the type of work that Boseman was doing at the time the employment was terminated, which was work of a laborer in the fire department, I believe. With reference to the collection of premiums and delivery of certificates and making of applications, on all of the employees of the Gulf Refining Company at Port Arthur who qualified under group policy G5039R, all those transactions took place in Port Arthur, Jefferson County, Texas."

Cross Examination by Mr. Cecil.

"John Boseman was laid off on October 8, 1932, at the Gulf Refining Company. I believe he worked on the 7th. I do not have that record. October 8, 1932, was the last day of his employment. Sometime in the latter part of March, 1933, he was reemployed or came back to work and worked four and a half hours. This was on March 29, 1933. I have the record card showing the date of cancellation of Boseman's insurance under policy G5039R. That record reflects the date of cancellation was October 8, 1932, and the amount of the refund was $1.84. By 'amount of refund' I mean the amount of refund on premiums from the 8th to the

31st of October, 1932. Boseman's insurance which he had under group policy G5039R and which was cancelled in October, 1932, was not reinstated in March, 1933, when he worked four and a half hours, nor was he eligible for reinstatement. Our records show that he did not at that time or for that period have any additional certificate. Our records reflect that the reason why Boseman was laid off, discharged or his employment terminated in October, 1932, was just on account of reducing forces. There was at that time a quite general reduction of forces at the Gulf Refining Company in Port Arthur. Our records show the cause of the termination of his employment in October, 1932; he was paid off on account of reducing forces, a permanent lay-off. It was a permanent lay-off. I have charge of the insurance department down there under the auditor. I do not have any communications in regard to this insurance with the Connecticut General Life Insurance Company at Hartford, Connecticut. My communication is with the plant manager at Port Arthur, Mr. Stevenson. My department, the one of which I am head, at the request of the employees who are insured under this policy, when they come to me with reference to questions about that, I attempt at their instance and request to find out the answers and inform them of anything that they might want to know. I do that at the request of the employees who are insured and not at the

request of the Connecticut General Life Insurance Company. The records concerning the work done by Boseman for a period of six or seven months before he was laid off in the reduction of forces reflects he worked substantially the same number of hours and the same amount of time as the other employees in his particular line of work —with the exception of the four days he worked full time."

Re-Direct Examination by Mr. Howell.

"The records I have here are made in two parts, and they are taken from a memorandum and the typist in the accounting department typed this on the front part of these records. These are taken from the original insurance, this is the original insurance policy. As to what that was taken from, it was taken from his employment card, which is the original of his employment card. As to how long John Boseman remained in the employ or on the rolls of the Gulf Refining Company after October 8, 1932, I will state he was dropped immediately. The Connecticut General Life Insurance Company was notified that John Boseman was dropped from the rolls about the 12th day of the following month."

Re-Cross Examination by Mr. Cecil.

"After John Boseman was dropped from the rolls and his employment was terminated in the

early part of October, 1932, our records do not reflect that any payroll deductions were made or any money paid by this man into our office covering any premium on policy G5039R at any time thereafter."

Mr. Howell: "Do your records reflect that the Connecticut General Life Insurance Company ever made, ever returned to the Gulf Refining Company any premiums on John Boseman for any period of time?"

Mr. Gardiner: "That our company returned to—"

Mr. Howell: "No, that the Connecticut General Life Insurance Company returned to you on premiums paid by John Boseman."

Mr. Gardiner: "He was refunded $1.84 at the time he was paid off."

Mr. Howell: "And that is all?"

Mr. Gardiner: "Yes."

Mr. Cecil: "By whom was that refund made?"

Mr. Gardiner: "It was made by Gulf Refining Company."

Witness excused.

JOHN BOSEMAN, plaintiff, being called as a witness on behalf of himself, and having first been duly sworn, testified as follows, and only as follows, upon the issues material:

Direct Examination by Mr. Howell.

"I live at 916 Dunbar Street, Port Arthur. I went to school about three months, but while

there I learned to read and write very little, though I am able to sign my name and recognize my signature. After I came to Port Arthur the regular work I started doing was at the Gulf Refining Company. I am now 43 years of age. The type of work I went to doing at the Gulf Refining Company was that I was working in the labor gang, toting pipes. I started in 1916. The work I did was just toting pipes and cleaning up around the yards, building levees, rolling wheelbarrows. All the work that I did at the refinery was labor work. In 1918 I was given a policy of insurance with the Gulf Refining Company. This insurance provided for permanent total disability. Then in 1925 I was given an additional policy of insurance upon which I paid part of the money. This second policy also provided for total permanent disability. I kept those policies until on or about April 1, 1932, at which time I was given this certificate here that had been introduced in evidence. As to the other certificates under those other two group policies, I returned them to the Gulf Refining Company, and then, later, was given this one. After I got this certificate at the Gulf Refining Company, I was never given any other insurance through them or through the Connecticut General Life Insurance Company. This is the only policy or certificate I have. When I got that certificate it was delivered to me at the main office of the Gulf Refining Company in Port Arthur, Texas.

After I was delivered this certificate and after I executed the payroll deduction order introduced here yesterday, the Gulf Refining Company commenced to make deductions from my pay each month and these deductions were made at the Gulf Refining Company, Port Arthur, Texas. I signed that payroll deduction order and application for the insurance at the Gulf Refining Company, Port Arthur, Texas.

As to how I felt before I was laid off in 1932, and whether or not I lost any time immediately before then and the reason for my losing such time—I lost time along in 1931, I was feeling bad, pain, misery in my head, and misery up in here, and misery in my back and my knees. That began along in 1931. As time went on I got worser. A week or so before, or a few days before I was laid off in 1932, I lost some time; I lost several days; and don't remember how many days, but I know it was several days. Long before I was laid off in 1932 I would have to get up often at night to urinate. When I was laid off on October 8, 1932, with a general reduction of forces, I don't remember whether that was when they laid off a large number of men down there or not. Mr. Dobbs laid me off, he told me I was being laid off. He is the employment man in the Gulf Refining Company. He laid me off, to my remembrance, around 3 or 4 days after I had been in bed sick.

I did not feel physically able to continue on in my work.

I was recalled for employment at the Gulf Refinery. I was notified to return to work there by Mr. Dobbs, and I reported back to him for work; that was in March, 1933. That was on March 30, 1932, yes, sir, I was already working for the Gulf Refining Company on March 30, 1932. I worked there a few hours. I was not laid off until October 9, 1932. I never did any work at any time during the year 1933 at the Gulf Refining Company; not at any time. I never did report back in 1933, and worked 7½ hours on the 30th day of March, 1932, or 1933; 1932, I think it was. I was laid off on October 8, 1932. I went back to work for the Gulf Refining Company in 1933; that was the following year after I was laid off. I had been working continuously for them up until I was laid off in 1932. In 1933 Mr. Dobbs called me back and put me back to work. He is the employment man at the Gulf Refinery, and the same man who laid me off before. I worked several hours when I was called back; about 4½ or 7 hours, something like that; something between 4½ and 7 hours; I didn't do a full day out there. I reported back to work the following morning and they sent me to the doctor to be examined. The kind of work I did when they called me back in 1933, when I worked 4 or 4½ hours out there, was cleaning up in a boat, down in the hold. I reported

to the Gulf Refining Company doctor for an examination. After he examined me I then reported to another man there. I was not passed for employment; I was again laid off. I did not work any time since that time. I did not work any at all doing any type of work or any kind of work from the time I was laid off in 1932 until I was re-employed in 1933; no more than those several hours out there. I have not done any work of any type or character since that time.

After I was delivered that certificate there, down there at Port Arthur, $2.40 was deducted from my pay check each month. I never received any money from the Gulf Refining Company for the last day I worked there. I have employed attorneys in this case, to-wit, your firm, you and your father, and have agreed to pay you a fee."

Cross Examination by Mr. Cecil.

"Along in June, 1932, I just realized and felt so bad that I felt like and knew I wasn't able to work any more; yes, getting worse and worse. It was at that stage that I felt like I couldn't go on with my work. After that time I worked anyway until the first part of October, 1932, that is, for about 4 more months. I was doing hard manual labor all that time. The work I was doing is hard work. Then I was laid off on account of reduction of forces.

As to my being recalled to work in 1933, no one came to get me, but I went up to Mr. Hobbs and he hired me. I wasn't recalled to work, but I went out there and applied for work, I wanted to get my job back. In March, 1933, I did not go out to the employment office and apply for a job; they called my name. I was out there at the Gulf Refining Company office waiting for employment in March, 1933, and they called my name and I agreed to go back to work. I am familiar with the fact that Dr. Long and the Gulf Refining Company physician examine the new men before they start to work, and I was required to take an examination before I started back to work. I went to Dr. Long, when I started back to work in 1933, and wanted to go back to work, to be examined by him. He examined me and told me to sign something. I did not read it; I couldn't read it, couldn't understand it. As to whether or not I knew that was an instrument stating I had a predisposition to hernia and that I would not attempt to hold the Gulf Refining Company responsible for that condition that was already existing—the man told me that it was for me to sign the paper, and I asked him what it was. He said: 'This is a paper that says you have been operated on.' The paper further stated that on the other side of me was liable to develop into a hernia; liable to come out and kill me any time. As to whether or not the man told me the hernia was liable to kill me, I would say yes, sir; liable to

come down on me. Dr. Long did not tell me that, but the man he sent me to, whose name I don't know, told me that. Dr. Long, after examining me, did not tell me that I could go back to work if I would sign this instrument, which I refused to sign, saying I had a predisposition to hernia, but the other man did tell me that. I wouldn't sign it, and I didn't work any more after that. I was told unless I did sign such acknowledgment I would not be allowed to work at the Gulf Refining Company and I refused to sign it. I didn't work at the Gulf Refining Company since that time. I think it was 4 hours, something like that, I disremember, that I did work on that day before I went to get that employment examination. When I worked at the Gulf Refining Company before I was laid off in the early part of October, 1932, I was paid by the hour. I worked from day to day. I did not have a contract hiring me for 6 months or a year, but I just worked from day to day. I was paid twice a month. As to whether or not quite a few other men were laid off in 1932, I disremember now if they laid off any other men. When I was laid off out there in October, I didn't know I was going back there to work any time soon. I knew I was laid off and I didn't know exactly when I was going back to work, or when there would be an opening for me. I was ready to go back if there was an opening; I was going back to try to work some more. That is the reason I went back there

in March to apply for employment. I went back to try and apply to be re-employed in March, 1933.

As to this certificate I have been asked about (under Group Policy G5039R) it was delivered to me at the Gulf Refining Company at Port Arthur. I do not know who gave it to me, it was given to me at the main office of the Gulf Refining Company at Port Arthur, Texas. I have agreed to pay my attorney a $1,000.00 fee, and that is all I have agreed to pay him.

In June or July, 1932, I told my foreman, Mr. W. A. Lay, that I was feeling bad and I was sick. I did not tell him that I wanted to lay off; but I did lay off when I couldn't work. As to whether or not I told Mr. Lay that I was unable to work—I told him my back was hurting me. I knew I wasn't able to work, but I was trying to do it. I did not tell Mr. Lay or anybody else I was unable to do my work. I went ahead and worked without complaint to the Gulf Refining Company or this insurance company until I was laid off in October, 1932; and then I applied for re-employment in March, 1933.

After I was laid off in October, 1932, I did not continue to pay any premium on this policy of insurance or this certificate that has been offered in evidence. I did not in October, 1932, write a letter notifying the insurance company that I was unable to work. I didn't say anything to them. The first time that I ever notified this insurance

company, or claimed I was unable to work, was through my lawyers, Howell & Howell, in April of 1933. I knew all during this time that I had this insurance.

As to how many times I have tried to cut wood around my house since I was laid off in October, 1932, I never did try to cut wood around the house —I was unable to and never did even try. I can read a letter. I can read now."

Re-Direct Examination by Mr. Howell.

"I do not know what is meant by 'to make application or apply.' As to why I happened to go out to the Gulf Refining Company on the morning that my employment was given back to me out there, I went out there to try to work. As to whether or not any one told me to come out, they said they were hiring men and were calling the names. I went out there and they called my name, and then I went in. I remember that instrument, Mr. Cecil asked me about, which stated I was physically able to do any and all work, and which I refused to sign. As to whether or not they told me that paper said on it that I agreed and stated that I was able to do my work as well as I always had, and could and would do any work that might be given to me, I would say no, sir, not that I know of. He did not tell me that."

Re-Cross Examination by Mr. Cecil.

"About my going back to the Gulf in 1933, I heard around Port Arthur that they were hiring men out at the refinery and I wanted to go back to work. I knew that the refinery would hire the old men that they had previously employed in preference to strangers. When I heard that they were putting men to work I wanted to go back to work and I went out there myself on my own free will. I showed up at the Gulf Refining Company and asked for a job. When they called my name I told them I wanted to go to work."

DR. F. W. SUTTON was then called as a witness on behalf of the plaintiff, and having been duly sworn, testified as follows:

"I am a duly licensed and qualified practicing physician, and I examined John Boseman approximately four or five times, the first examination being made on April 25, 1933, and from time to time thereafter until the date of the trial. Such examinations reveal that he is suffering from syphilis, chronic bronchitis and diabetes, and his condition is progressively worse, and from the examinations, he is unable to do any work requiring muscular effort and physical exertion, and such condition is a permanent one, and the disease of diabetes is incurable, and he is suffering from a general weakness as well as the other conditions

and in my opinion he is permanently and totally disabled and such condition of permanent total disability has been present since on and prior to October 8, 1932."

MR. D. C. MARCUS was then called as a witness for the plaintiff, and having been duly sworn, testified as follows, after having been admitted by counsel that he was a duly qualified and licensed attorney:

Direct Examination by Mr. Howell.

"In the practice of my profession I have had occasion to handle cases involving insurance policies both for the plaintiff and the defendant. My practice has been confined mostly to the defense of such policies, rather than the collection. In answer to your question, assuming a case against Connecticut General Life Insurance Company upon a policy of insurance, the amount of which is $4,000.00, taking into consideration the preparation for trial, together with the institution of suit, the trial of the case, the possibilities of an appeal, I would state that in my opinion $1,000.00 would be a reasonable fee for the prosecution of such claims."

Cross Examination by Mr. Cecil.

"I have not prosecuted any suits on group life policies. I have never been chief counsel in one. I have never tried a single one."

Re-Direct Examination by Mr. Howell.

"There is no distinction between those and other policies. I think I am familiar with the amount of work to be done in these cases."

Witness excused.

The plaintiff then offered in evidence certain portions of the testimony given by JOHN M. LAIRD of Hartford, Connecticut, given in answer to direct interrogatories propounded by the defendant in this case and certain testimony given by the same witness in such deposition to cross interrogatories propounded by the plaintiff; said deposition having been taken in Hartford, Connecticut, on a commission for such duly issued out of this court, and sworn to by said witness on November 3, 1934.

The plaintiff offered the following testimony of such witness in answer to direct interrogatories:

"My name is John M. Laird; I am fifty years old and live at Hartford, Connecticut. I am vice-president of the Connecticut General Life Insurance Company. I have been connected with such company for almost twenty-five years. In 1918, I was actuary of such company. Since 1918, I have served as actuary, as secretary of the company and as vice-president of the Connecticut General Life Insurance Company, the position I now hold."

The plaintiff then offered the following testimony of such witness, from such deposition, given in answer to cross interrogatories:

"With reference to whether or not it was the intention of the Connecticut General Life Insurance Company to insure the employees of the Gulf Refining Company at Port Arthur, Texas, under such policy provided such employees complied with the terms and conditions contained therein, I will state it was the intention of the Connecticut General Life Insurance Company to insure all employees of the Gulf Oil Corporation of Pennsylvania and affiliated and subsidiary companies wherever located. Some of the employees of the Gulf Refining Company at Port Arthur, Texas, were insured under policy G5039R. As to whether or not the Connecticut General Life Insurance Company gave to the Gulf Oil Corporation or the Gulf Refining Company any authority to cancel any certificate issued under group policy G5039R, prior to the cancellation of policy G5039R, so long as the holder of such certificate was an employee of the Gulf Refining Company or the Gulf Oil Corporation, I will state the Gulf Oil Corporation of Pennsylvania, the assured under this policy, had such authority in this connection, if any, as was given to it by the terms of the policy. It had authority to terminate employment and this automatically terminated insurance. The Gulf Refining Company at Port Arthur, Texas, had no authority from the Connecticut General Life Insurance Company to pay any claim or to release any claim or to secure release of any claim under

group policy G5039R, either as agent for, or acting for the Connecticut General Life Insurance Company. As to whether or not the Connecticut General Life Insurance Company knew at the time it was issuing such certificates covering employees of the Gulf Refining Company at Port Arthur, Texas, that such certificates would be delivered to such employees at Port Arthur, Texas—the Connecticut General Life Insurance Company did not issue certificates to the employees of the Gulf Refining Company at Port Arthur, but, on the other hand, did as its policy required, and issued these certificates to the Gulf Oil Corporation of Pennsylvania, the assured under the policy. The certificates were sent from Hartford, Connecticut, to the Gulf Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania. I don't know whether the Connecticut General Life Insurance Company knew that at the time it issued a certificate to John Boseman that such certificate would be delivered to him at Port Arthur, Texas. As to whether or not it was the intention of the Connecticut General Life Insurance Company that the certificates issued to the employees of the Gulf Refining Company at Port Arthur, Texas, were to be delivered to such employees at that place, I will state it was the intention of the Connecticut General Life Insurance Company to carry out the terms of the policy regarding the issuance and delivery of the certificates. The terms of the policy required the

issuance and delivery of the certificates to the assured employer, the Gulf Oil Corporation of Pennsylvania. It did this. I don't know that the premiums paid by the Connecticut General Life Insurance Company were paid by assessing, as predicated upon a wage scale, employees of the Gulf Oil Corporation and/or subsidiary and/or affiliated companies and thereafter in turn paid to the Connecticut General Life Insurance Company. The Connecticut General Life Insurance Company did not require a physical examination of any employee of the Gulf Refining Company, or any statement of such employee of the Gulf Refining Company prior to the issuance to such employee of insurance under policy G5039R. I believe the premium charged under policy G5039R was something less than one dollar per month per thousand insurance when the policy was issued, but the rate was later increased to something over one dollar per month per one thousand insurance. The Connecticut General Life Insurance Company did not authorize the Gulf Oil Corporation or the Gulf Refining Company, or any employee, agent or official of either of said companies to procure for the Connecticut General Life Insurance Company a release from John Boseman of any and all claims that he might have under policy G5039R. The attorneys in Beaumont, Texas, for the Connecticut General Life Insurance Company are Messrs. Orgain, Carroll & Bell and Messrs. Barnes &

Barnes. I have never discussed this case with the attorneys for our company. I have never conveyed to such attorneys any recommendations or any information that I have available with reference to this case. I have not heretofore advised them that John Boseman never at any time executed a release in favor of the Connecticut General Life Insurance Company, of any and all claims that he might have under the certificate issued to him under policy G5039R. I have not heretofore conveyed to the company's attorneys any information concerning the claim of John Boseman, though there has been certain correspondence between the claim department and Messrs. Orgain, Carroll & Bell, in reference to this case, but I have not participated in it. The Connecticut General Life Insurance Company makes no distinction between the insurance it issues to negroes from the insurance it issues to persons of other races under group policy G5039R. I am not sure as to whether the Connecticut General Life Insurance Company has refused in the past any insurance from a negro by reason of the fact that he was a negro, although I know that applications for insurance on the lives of negroes are underwritten with more care than other applications. I don't know as to whether or not the Connecticut General Life Insurance Company desires to write insurance on the people of Texas. I don't know that the reason the Connecticut General Life Insurance Company

does not desire to engage in business within the State of Texas is that it believes that the laws of Texas are too harsh and stringent to permit it to operate—I don't know such."

Cross interrogatory No. 4 (by plaintiff):

"Did the Connecticut General Life Insurance Company recognize, authorize and honor any and all transactions that the Gulf Refining Company or the Gulf Oil Corporation made and had between the Gulf Refining Company or the Gulf Oil Corporation and its employees, with reference to the issuance, delivery, cancellation, extension and reinstatement of the employees' insurance under group policy G5039R, as agents for or in behalf of Connecticut General Life Insurance Company?

(a) Has it done so in the past?"

Mr. Laird (answer to cross interrogatory No. 4):

"The Connecticut General Life Insurance Company did honor such transactions of the Gulf Oil Corporation of Pennsylvania or affiliated or subsidiary companies in this connection as were in accordance with the terms of the policy.

(a) The practice referred to just above has been in force in the past."

Mr. Howell: "Now, we next offer in evidence part of the interrogatories propounded to Thomas A. Tully of Hartford, Connecticut, a witness for

the defendant, and who is an employee of the Connecticut General Life Insurance Company."

The plaintiff then offered direct interrogatories directed to MR. THOMAS A. TULLY and his answers to same upon a commission duly issued out of this court for such, after being duly sworn, which testimony was as follows:

"My name is Thomas A. Tully; I was born in 1899 and I live in East Hartford, Connecticut. I am employed in the group department of the Connecticut General Life Insurance Company and have charge of the records pertaining to group insurance and have been employed by such company since 1920. I am now chief clerk of the group department of the Connecticut General Life Insurance Company and have held this position since 1930. I have had access to the records of the Connecticut General Life Insurance Company since my employment with that company commenced in 1920, and since 1930, I have had general supervision over these records, as well as access to them. The Connecticut General Life Insurance Company received on March 7, 1934, from Howell & Howell, or John Boseman, or someone else, a so-called proof of total and permanent disability, the other side of which document contained an attending physician's statement. The attending physician's statement was signed March 1, 1934, but the other side of this document bore the date

of April 25, 1933. The Connecticut General Life Insurance Company received notice of a claim by or for John Boseman in the form of a copy of a letter dated April 12, 1933, from Messrs. Howell & Howell, which was received by the Connecticut General Life Insurance Company on May 22, 1933."

In answer to the cross interrogatories offered by the plaintiff, the witness in such deposition testified:

"The plaintiff, John Boseman, was insured under policy G5039R. His insurance commenced under such policy on April 1, 1932; and his insurance under such policy was terminated by the Connecticut General Life Insurance Company on October 8, 1932. I am unable to prepare a complete and detailed account of all the premiums paid by the Gulf Oil Corporation of Pennsylvania to the Connecticut General Life Insurance Company on policy G5039R from the time that the policy was issued to the date of the cancellation, showing premiums collected, refund of premiums, premium adjustments, assessments, how and when made, as requested by you (plaintiff) because the preparation of such would require the expenditure of considerable sums and no funds have been supplied to me by anyone for this purpose. For the same reason I am unable to attach a copy of the records of the Connecticut General Life Insurance Company showing the payment of all claims paid to persons living within the State

of Texas under group policy G5039R from the time that the policy was issued to the date of its cancellation, as requested by you (plaintiff). A premium charge on account of the insurance of John Boseman was made by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania, and this was paid. This charge was made and received during each month from April through December, 1932, although the charge for the period after the insurance terminated on October 8, 1932, had to be refunded, as required by the policy. The first premium charge was received about April 15, 1932, and thereafter about the first of each month. These premiums were paid by the Gulf Oil Corporation of Pennsylvania. The amount of same was three ($3.00) dollars per month. The last premium which Connecticut General Life Insurance Company had a right to retain was for the period ending October 8, 1932, although, as I have explained, a premium charge was made and refunded for the period through December of 1932. I do not know, as you ask me, if premiums under this policy were paid by John Boseman executing a payroll deduction order to the Gulf Refining Company at Port Arthur, Texas, and that the Gulf Refining Company every two weeks made such deductions insomuch as the Connecticut General Life Insurance Company keeps no records in this connection and is not concerned with any such deductions.

As to whether or not our records reflect that the Connecticut General Life Insurance Company has any insurance in effect, either group, health, life, accident or any other form of insurance in Texas, other than such insurance it carried on the employees of the Gulf Refining Company between March 31, 1932, and the 1st day of April, 1933—yes, many of the former policyholders of the Connecticut General Life Insurance Company have moved to Texas and it has this insurance. I am unable to attach policy G5039R for the reason that this policy is in the possession of the Gulf Oil Corporation of Pennsylvania, the assured, to whom it was issued. I am unable to attach a photostatic copy of the policy because of the expense involved and no funds have been supplied to me for this purpose. Our attorneys, Messrs. Orgain, Carroll & Bell have, however, been authorized to procure a copy of this policy for use in this suit. I am unable to attach a copy of the records of the Connecticut General Life Insurance Company showing the amount of premiums paid by the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies from March 31, 1932, to April 1, 1933, upon group policy G5039R, for the reason that the preparation of such would require the expenditure of considerable sums and funds have not been supplied to me for this purpose; most of the records so far as they pertain to John Boseman have been attached.

"I am unable to attach copy of the records of the Connecticut General Life Insurance Company showing the amount of money paid out on the claims under policy G5039R from March 31, 1932, to April 1, 1933, for the reason that the preparation of such would require the expenditure of considerable sums and funds have not been supplied to me for this purpose. Claims arising under group policy G5039R were paid by the Connecticut General Life Insurance Company mailing a check made out to the proper person from the home office of the Connecticut General Life Insurance Company to the home office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania. I assume that such checks were in turn delivered to such employees or their beneficiaries who lived in Port Arthur, Texas. Our records reflect that the Gulf Refining Company was a subsidiary or affiliated company of the Gulf Oil Corporation of Pennsylvania, which employees of the Gulf Refining Company were eligible for insurance under policy G5039R from March 31, 1932, to April 1, 1933. As to whether or not our records reflect that any certificates of insurance issued to the employees of the Gulf Refining Company under policy G5039R were delivered to such employees in Port Arthur, Texas, between March 31, 1932 and April 1, 1933, I will state the connection of the Connecticut General Life Insurance Company with these certificates ceased with their delivery to the assured, the Gulf

Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania. The Connecticut General Life Insurance Company keeps no records in connection with any delivery, it is not concerned with such. The Connecticut General Life Insurance Company has no release that I know of from John Boseman of any and all claims that he might have under policy G5039R."

(The foregoing testimony of Mr. Tully offered by plaintiff was taken in Hartford, Connecticut, and sworn to by such witness on November 3, 1934.)

Mr. Howell (on behalf of the plaintiff): "We rest Your Honor."

TESTIMONY OFFERED BY THE DEFENDANT.

The defendant then offered in evidence, the remaining testimony given by JOHN M. LAIRD of Hartford, Connecticut, and sworn to on November 3, 1934, in answer to direct interrogatories propounded by the defendant.

(Testimony concerning group policies G5039 and G5545, and the insurance thereunder, canceled March 31, 1932.)

"I assisted other agents and representatives of the Connecticut General Life Insurance Company in connection with the negotiations for the issuance of group policy G5039, dated as of November 12, 1918. I also assisted other agents and representatives of the Connecticut General Life

Insurance Company in connection with the negotiations for the issuance of group policy G5545, issued in 1925 and dated as of April 1, 1925. Both of these policies were issued on their respective dates, by the Connecticut General Life Insurance Company of Hartford, Connecticut, to the Gulf Oil Corporation of Pennsylvania, which policies were known as policies of group insurance on the Gulf Oil Corporation of Pennsylvania, and its subsidiary and/or affiliated companies. I dealt with the Gulf Oil Corporation of Pennsylvania (in 1918, at the time of the issuance of group policy G5039, the name was then Gulf Oil Corporation). The negotiations for each of those contracts were had and took place in Hartford, Connecticut, and in Pittsburgh, Pennsylvania. The home office of the assured, The Gulf Oil Corporation of Pennsylvania, is Frick Building Annex, Pittsburgh, Pennsylvania. The final agreements between the Connecticut General Life Insurance Company and the Gulf Oil Corporation of Pennsylvania for the issuance of each of said group policies, to-wit, G5039 and G5545, were reached in Pennsylvania. The written applications for the issuance of each of said policies were signed by the Gulf Oil Corporation in Pennsylvania, and each of said applications was delivered by the Gulf Oil Corporation of Pennsylvania to the Connecticut General Life Insurance Company at Pittsburgh, Pennsylvania. Policy G5039 and policy G5545, were each and both

signed and executed, on their respective dates, by the Connecticut General Life Insurance Company at Hartford, Connecticut. Each of such policies was delivered to the Gulf Oil Corporation of Pennsylvania in the City of Pittsburgh, Pennsylvania, by representatives of the Connecticut General Life Insurance Company. None of the negotiations for either of said policies, to-wit, G5039 and G5545, or any of the acts in the execution and delivery of either of said policies from the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania, took place in any state other than Connecticut and Pennsylvania. There were three amendments to policy G5039 prior to March 31, 1932, and there were two amendments to policy G5545 prior to March 31, 1932. The applications or requests for each of these amendments came from the Gulf Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania.

Group policy G5039 and group policy G5545, each and both, were on March 31, 1932, lapsed and canceled. All individual coverage which was in force under these policies, and each of them, on March 31, 1932, necessarily ceased on that date when the policies were canceled. The insurance on many employees was, of course, canceled in accordance with the terms of the policies prior to March 31, 1932. Policies G5039 and G5545 ceased to be effective on March 31, 1932, and were terminated at that time upon the request of the as-

sured thereunder, the Gulf Oil Corporation of Pennsylvania. No premiums were received by the Connecticut General Life Insurance Company covering an employee's insurance under either of said group policies, to-wit G5039 and G5545, for any period after March 31, 1932; and neither of said group policies was in force and effect for any purpose after that date. The agreement for the cancellation of these policies was made by the Gulf Oil Corporation of Pennsylvania, and application for such cancellations, coming from the Gulf Oil Corporation of Pennsylvania, were received prior to March 31, 1932.

The Gulf Oil Corporation of Pennsylvania was charged by the Connecticut General Life Insurance Company with all premiums accruing under policies G5039 and G5545, and the insurance thereunder, and such oil corporation paid all premiums received by the Connecticut General Life Insurance Company under these policies. These premiums were paid either at Pittsburgh, Pennsylvania or Hartford, Connecticut. The Connecticut General Life Insurance Company did not exercise any control or direction as to the source or persons from whom the Gulf Oil Corporation of Pennsylvania and its subsidiary companies secured the funds or premiums, which were paid upon policies G5039 and G5545 and the insurance thereunder. From time to time refunds were made by the Connecticut General Life Insurance Company for

unearned premiums upon the individual insurance under group policy G5039, as well as group policy G5545—that is, when an employee's insurance under either or both of said policies had been canceled, such refunds were made to the Gulf Oil Corporation of Pennsylvania. The Connecticut General Life Insurance Company has never dealt and does not now deal with any of the employees of the Gulf Oil Corporation or of its subsidiary companies that may have been insured under group policy G5039 and G5545, or either of them, either with reference to such insurance, or with reference to the issuance of certificates, or with reference to the premiums due on the insurance evidenced by said certificate, or with reference to claims arising under said policies; these dealings were and are with the Gulf Oil Corporation of Pennsylvania, and not with the individual employees. The Connecticut General Life Insurance Company from time to time, issued certificates and increases of certificates evidencing an employee's insurance under said group policy G5039, and also did the same with reference to an employee's insurance under group policy G5545. These certificates and increase notices were, in practice, sent to the home office of the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania. These certificates were issued upon notice in writing from the Gulf Oil Corporation of Pennsylvania, and these certificates were sent from

Hartford, Connecticut, when they were issued, to the office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, where the connection of the Connecticut General Life Insurance Company with them ceased. This practice was well established. Claims arising under group policy G5039 and group policy G5545, or either of them, were and are paid by the Connecticut General Life Insurance Company by mailing a check from its home office in Hartford, Connecticut, made out to the proper person, to the home office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania.

The Connecticut General Life Insurance Company has never authorized the Gulf Refining Company at Port Arthur, Texas, nor Charles R. Stevenson of Port Arthur, Texas, nor W. J. Steck of Port Arthur, Texas, nor any officer or employee of the Gulf Refining Company, nor the Gulf Oil Corporation of Pennsylvania, nor any official or employee of such corporation, either in writing or otherwise, to in any way represent the Connecticut General Life Insurance Company or bind it concerning policies G5039 and G5545, or either of them, or any insurance under same or either of same, or any matter pertaining thereto. Neither the Gulf Refining Company at Port Arthur, Texas, nor Charles R. Stevenson, nor W. J. Steck, the latter two of Port Arthur, Texas, nor any officer or employee of the Gulf Refining Company, nor

the Gulf Oil Corporation of Pennsylvania, nor any official or employee of such corporation, has ever, at any time, with the knowledge, consent or permission of the Connecticut General Life Insurance Company, represented or acted for such insurance company with reference to any matter pertaining to policies G5039 and G5545, or either of them, on any employee's insurance thereunder, or any matter pertaining thereto. The Connecticut General Life Insurance Company did not exercise any control or direction over the Gulf Oil Corporation of Pennsylvania concerning the mode and manner in which it handled said certificates and certificates of increase issued under group policy G5039 and group policy G5545, after such certificates were delivered to said company at Pittsburgh, Pennsylvania, by the Connecticut General Life Insurance Company. The insurance company did not require the Gulf Oil Corporation of Pennsylvania or anyone else to surrender to such insurance company an employee's certificate prior to the entry upon the records of the insurance company of the cancellation of an employee's insurance under policies G5039 and G5545, either or both, as these certificates were merely memoranda showing some of the terms of the policies and not part of the contracts. The Connecticut General Life Insurance Company treated an employee's insurance as becoming effective under such group policies, and such insurance did become effective, on the date

shown by the notices received from the Gulf Oil Corporation of Pennsylvania, which notices stated the date that such employee had become insured under such policies, either or both. Premiums were paid by the Gulf Oil Corporation of Pennsylvania upon an employee insured under such group policies G5039 and G5545, or the respective premiums for insurance under either of said policies, for the period commencing upon the date shown by the notice received from such oil corporation, giving the date upon which the employee had become insured under such policies, or either of them. Cancellation of an employee's insurance under either group policy G5039 or group policy G5545 was entered by the Connecticut General Life Insurance Company upon its records showing such cancellation effective as of the date the insurance had been terminated, to-wit, the date stated by the notice from the Gulf Oil Corporation of Pennsylvania, as the date of termination. Refunds were made by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania upon the canceled insurance of an employee for all periods after the date such notice from the Gulf Oil Corporation of Pennsylvania stated that the employee's insurance had been terminated.

Employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary and its affiliated companies insured under said policies, or either of them, were, while insured, located in various

states in the Union, and such insured employees were often transferred from one state to another in the Union with their insurance under such policies G5039 and G5545 remaining in force and effect. At various times, when employees of the Gulf Oil Corporation of Pennsylvania, or the employees of its affiliated or its subsidiary companies, have sought to present a claim under either group policy G5039 or group policy G5545 direct to the Connecticut General Life Insurance Company, such company has instructed such employees to take the matter up through their employer, which employer, under these policies, was and is the Gulf Oil Corporation of Pennsylvania. This was done for the reason that all dealings with employees, in connection with these policies, are, in practice, carried on through the Gulf Oil Corporation of Pennsylvania, at its Pittsburgh, Pennsylvania, office.

"The only group policy of insurance by the number of G5039 that the Connecticut General Life Insurance Company ever had in force and effect was that hereinbefore described, having been issued on March 12, 1918, to the Gulf Oil Corporation, and the only group policy No. G5545 that such company ever had in force was that one hereinbefore described, being issued on April 1, 1925, to the same corporation. On March 15, 1932, in connection with an application for group policy G5039R and in the same instrument, the Gulf Oil

Corporation made a request or application to the Connecticut General Life Insurance Company for the cancellation of both group policies G5039 and G5545, and a copy of this application is attached to group policy G5039R. This application for the cancellation of said two group policies was made and signed in Pennsylvania and was delivered in the same state by the Gulf Oil Corporation of Pennsylvania to the representatives of the Connecticut General Life Insurance Company. This application requested that said two group policies be canceled midnight March 31, 1932. This application was acted upon and accepted by the Connecticut General Life Insurance Company on or about March 15, 1932.

(Group Contract G5039R in Effect April 1, 1932, to April 30, 1933.)

"Prior to April 1, 1932, the Gulf Oil Corporation of Pennsylvania made application to the Connecticut General Life Insurance Company for the issuance to it of a new group policy of insurance to be known as 'G5039R.' The request for the issuance of such new group policy was made in the same instrument as the request for the cancellation of policies G5039 and G5545. I assisted and advised on behalf of the Connecticut General Life Insurance Company in connection with the negotiations and transactions concerning the cancellation of group policies G5039 and G5545, and

I also assisted and advised on behalf of the same company in connection with the application for the negotiations and transactions concerning the issuance and delivery of policy G5039R. My dealings were with the Gulf Oil Corporation of Pennsylvania and in so dealing I acted through representatives of the Connecticut General Life Insurance Company. The negotiations for group contract G5039R were had with the Gulf Oil Corporation of Pennsylvania and took place in Pittsburgh, Pennsylvania, the home office of our assured the Gulf Oil Corporation of Pennsylvania being in that city. The final agreement was reached in Pittsburgh, Pennsylvania, by the Connecticut General Life Insurance Company and the Gulf Oil Corporation of Pennsylvania for the execution and delivery of group policy G5039R; the application for such policy was signed by the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, and said written application was by the Gulf Oil Corporation delivered to the representatives of the Connecticut General Life Insurance Company in the same city; policy G5039R was signed and executed by the Connecticut General Life Insurance Company in Hartford, Connecticut, and said policy was thereafter delivered to the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, by an agent or representative of the Connecticut General Life Insurance Company. The policy became effective as of April 1,

1932. None of the negotiations for said policy G5039R and none of the acts in the execution and delivery of said policy took place in any state other than Connecticut and Pennsylvania. The Gulf Oil Corporation of Pennsylvania was charged with all premiums upon policy No. G5039R and all insurance thereunder, and that oil corporation paid all of such premiums to the Connecticut General Life Insurance Company. These payments were made by mailing a check from the home office of the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, to the home office of the Connecticut General Life Insurance Company at Hartford, Connecticut. The Connecticut General Life Insurance Company exercised no control or direction as to the source or persons from whom the Gulf Oil Corporation of Pennsylvania and its subsidiary companies secured the funds or premiums which were paid upon policy G5039R and the insurance thereunder to the Connecticut General Life Insurance Company. From time to time refunds were made by my company to the Gulf Oil Corporation of Pennsylvania for unearned premiums upon the insurance under group policy G5039R, when an employee's insurance had been canceled. The Connecticut General Life Insurance Company has not dealt and does not now deal with any of the employees of the Gulf Oil Corporation, or any of the employees of its subsidiary companies, with reference to in-

surance under group policy No. G5039R, or the issuance of certificates, or the premiums due on the insurance evidenced by such certificates, or the claims arising under said policy, but its dealings were and are with the Gulf Oil Corporation of Pennsylvania, its assured.

"The Connecticut General Life Insurance Company, from time to time issued certificates and increases of certificates, evidencing an employee's insurance under said group policy No. G5039R. These certificates and increases of certificates, when issued were by the Connecticut General Life Insurance Company delivered to the home office of the Gulf Oil Corporation of Pennsylvania at Pittsburgh. The Gulf Oil Corporation of Pennsylvania gave notice or notices to my company for the issuance of such certificates under such policy. The notices coming to my company for the issuance of certificates under [redacted]p policy G5039R and the place of delivery of [redacted] certificates when so issued and the party to whom such certificates were so delivered were the same concerning and respecting each and all of the certificates and each and all of the certificates of increase issued by the Connecticut General Life Insurance Company under such policy; this practice was well established. Claims arising under this policy were and are paid by the Connecticut General Life Insurance Company mailing its check made out to the proper person from the home office of the

Connecticut General Life Insurance Company in Hartford, Connecticut, to the home office of the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania. The Connecticut General Life Insurance Company has never authorized the Gulf Refining Company at Port Arthur, Texas, or Charles R. Stevenson of Port Arthur, Texas, or W. J. Steck of Port Arthur, Texas, or the Gulf Oil Corporation of Pennsylvania, or any official or employee of said corporation, in writing or otherwise, to in any way represent or bind it concerning policy G5039R, or any insurance thereunder, or any matter pertaining thereto; and neither of said corporations, or the employees or officials of either, or Charles R. Stevenson, or W. J. Steck has ever represented the Connecticut General Life Insurance Company in any way, with the knowledge, consent or permission of such insurance company concerning group policy G5039R and the insurance thereunder, and the matters pertaining thereto. The Connecticut General Life Insurance Company exercised no control or direction over the Gulf Oil Corporation of Pennsylvania concerning the mode and manner in which it delivered said certificates and certificates of increase under said policy, after same were delivered to such company at Pittsburgh, Pennsylvania by the Connecticut General Life Insurance Company. The Connecticut General Life Insurance Company did not customarily require the

surrender of an employee's certificate, prior to the entry upon the records of the Connecticut General Life Insurance Company of the cancellation of an employee's insurance under such policy for the reason that the certificate was not part of the contract of insurance, but only a memorandum of the insurance coverage which the employee had under policy G5039R. The Connecticut General Life Insurance Company treated an employee's insurance as becoming effective under such group insurance policy on the date shown by the notice received from the Gulf Oil Corporation of Pennsylvania, which notice stated the actual date that such insurance had become effective. Premuims were paid by the Gulf Oil Corporation of Pennsylvania upon an employee insured under group policy G5039R for the period commencing upon the date that the notice from such Oil Corporation stated as the date upon which such employee had become insured. An employee's insurance under group policy G5039R was treated, upon the records of the Connecticut General Life Insurance Company as having terminated on the date that the notice from the Gulf Oil Corporation of Pennsylvania actually stated it had been terminated. Refunds were made by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania upon the cancelled insurance of an employee from the

period that the notice from the Gulf Oil Corporation of Pennsylvania stated that the employee's insurance had terminated. The employees insured under this policy were and are located in various states of the Union and in foreign countries. These employees were transferred on occasions from one state to another in the Union with their insurance remaining in full force and effect under group contract G5039R, notwithstanding. Employees of the Gulf Oil Corporation of Pennsylvania and of its affiliated and of its subsidiary companies have been instructed to take up claims under group contract G5039R through the employer, the employer under this policy being the Gulf Oil Corporation of Pennsylvania. This is done for the reason that all dealings in connection with this policy are with the Gulf Oil Corporation of Pennsylvania. The Connecticut General Life Insurance Company has never had in force a group contract No. G5039R other than that bearing date April 1, 1932, issued to the Gulf Oil Corporation of Pennsylvania and subsidiary and/or affiliated companies, and this was the only group policy in force and effect between April 1, 1932, and April 30, 1933, covering the Gulf Oil Corporation of Pennsylvania and affiliated and/or subsidiary companies.

"The Connecticut General Life Insurance Company was not writing contracts of disability,

life, or group insurance in the State of Texas either in 1918, or in 1925, or in 1932. The Connecticut General Life Insurance Company was not, in 1917, writing any contracts of life, disability or group insurance in the State of Texas, and has not done such at any time since that date. The Connecticut General Life Insurance Company did not have in the year 1917 and has not had at any time since that date, any agent or agents qualified to write life, disability or group insurance in the State of Texas, and the Connecticut General Life Insurance Company did not have in 1917 and has not had at any time since said date an agent or agents authorized by it to write insurance or make insurance contracts of any character in the State of Texas. The Connecticut General Life Insurance Company has a permit to do business in Texas, but it has not qualified to write policies of insurance in that state because it has no licensed insurance agents there, pays no premium taxes to Texas and for other reasons. The Connecticut General Life Insurance Company has not at any time accepted an application for insurance coming from or originating in the State of Texas, but such applications were uniformly declined. The Connecticut General Life Insurance Company has never written or delivered a contract or policy of insurance of any kind or character in the State of Texas.

"The Connecticut General Life Insurance Company is incorporated under the laws of the State of Connecticut and its home office has always been in Hartford, Connecticut. The Gulf Oil Corporation of Pennsylvania is incorporated under the laws of the Commonwealth of Pennsylvania and its home office is in Pittsburgh, Pennsylvania. The Connecticut General Life Insurance Company has not at any time since 1917 had a president, vice president, secretary or assistant secretary residing or located in the State of Texas. In connection with group policies G5039, G5545 and G5039R, and the employees' insurance under same, and each of same, and all matters pertaining to same, and each of same, including the notice to the Connecticut General Life Insurance Company for certificates, the issuance and delivery of certificates, the collection of premiums, the notice that an employee had become insured under said policies, and the notice that an employee's insurance under said policies, and each of them, had terminated, the Connecticut General Life Insurance Company did not deal with any of the affiliated or subsidiary companies of the Gulf Oil Corporation of Pennsylvania. The dealings were all had with the Gulf Oil Corporation of Pennsylvania, acting principally through Mr. H. J. Smith, who is assistant treasurer in charge of insurance for the Gulf Oil Corporation of Pennsylvania, Pittsburgh, Pennsylvania."

The defendant then offered in evidence the testimony given, after being duly sworn, on November 3, 1934, on a commission issued out of this court, by MR. THOMAS A. TULLY, in answer to direct interrogatories propounded by the defendant:

"I have had in the past some connection with the handling of the employees' insurance, the certificate evidencing such insurance, and premiums under group policy known as G5039, issued in 1918; I have also had some connection with the same matters under and pertaining to group policy G5545, issued in 1925. Since 1930 I have had access to and general supervision over the permanent records of the Connecticut General Life Insurance Company pertaining to these policies, which records pertain to the handling of the employees' insurance, the certificates evidencing such, premium collections, premium refunds, as well as the cancellation of employees' insurance under such two group policies. I am now familiar with, and have the custody of the permanent records of the Connecticut General Life Insurance Company pertaining to such matters; such policy records relating to such matters, of the Connecticut General Life Insurance Company, were properly and actively kept in due course of business of such insurance company and truthfully reflect the facts as shown in such; such records since made have been continuously used and accepted by my company, as well as the Gulf Oil Corpora-

tion of Pennsylvania, as a basis of determining the commencement of an employee's insurance, the amount of such, the termination of such, and the premiums paid by the Gulf Oil Corporation to my company upon such. All premiums which the Connecticut General Life Insurance Company receive on account of insurance in force under such two policies were received from the Gulf Oil Corporation of Pennsylvania, formerly the Gulf Oil Corporation, and were paid to my company monthly in advance. These premiums were calculated upon the number of employees then insured thereunder and the respective amount of such employees' insurance. The Connecticut General Life Insurance Company never received and retained any premium upon any employee's insurance under either group policies G5039 or G5545 for any period after midnight of March 31, 1932. I am familiar with the records of the Connecticut General Life Insurance Company pertaining to the insurance under group policies G5039 and G5545, and particularly the insurance of John Boseman under two such group policies and such records reflect that any and all insurance and certificates in the name of John Boseman under such two group policies was cancelled and terminated upon midnight, March 31, 1932, when the entire policies lapsed and were cancelled. About March 31, 1932, my company actually entered upon its permanent records the cancellation of the in-

surance in the name of John Boseman under group policies G5039 and G5545. Group policies G5039 and G5545, each and both, lapsed and were cancelled on midnight, March 31, 1932. The agreement for the cancellation of these policies was made with the Gulf Oil Corporation of Pennsylvania and the application for the cancellation was received from that corporation, which application was made and accepted on or about March 15, 1932."

(The permanent record cards of the Connecticut General Life Insurance Company attached to the answers of the witness with reference to John Boseman's insurance under group policies G5039 and G5545 were offered in evidence and were as follows:

(a) As to group policy G5039:

"Name—Boseman, John (Negro).

G5039. Certificate No. 8349.

Policy Date—11/12/18.

Amt. of Ins.—$1000—Increased $250 per year thereafter until reached $2500 on 11/6/25.

Date of Birth—3/7/72. Age—47

Beneficiary—Mamie Boseman.

Relationship of Beneficiary—Wife.

Employment Begins—11/6/18. Ends—March 31, 1932.

Insurance Begins—11/6/19.

Department—Gulf Refining Company, Port Arthur."

(b) As to group policy G5545:

"Name—Boseman, John. Certificate No. 9100.
G5545. Maximum.
Policy Date—4/1/25.
Amount of Ins.—$1000 (Increased to $1500 11/1/29).
H.O.—9093.
Date of Birth—3/7/72. Age—53.
Beneficiary—Nancy Boseman.
Relationship—Mother.
How payable—Lump sum
Card No.—79. Ends March 31, 1932.
Department—Port Arthur Refinery)."

"I have been connected in the past and am now connected with the handling of the employees' insurance, the certificates evidencing such insurance, and the premiums under group policy known as G5039R, issued April 1, 1932, by the Connecticut General Life Insurance Company to the Gulf Oil Corporation of Pennsylvania and its subsidiary and/or affiliated companies. Since the issuance of this policy in 1932, I have had general supervision over and access to all of the records of Connecticut General Life Insurance Company pertaining to this policy. These permanent records pertain to the handling of the employees' insurance, the certificates evidencing such, the premium collections, premium refunds, as well as cancellation of employees' insurance under group policy G5039R. I am now familiar with and have the

custody of such permanent records, which show the insurance in force and certificates issued under group policy G5039R since April 1, 1932, as well as the premium collections upon said policy since such date, and the other matters hereinbefore stated as appearing in such records. These permanent records were properly and accurately kept in due course of business of the Connecticut General Life Insurance Company and truthfully reflect the facts as shown in such; they were compiled and kept and since compiled have been continuously used and accepted by my company, as well as the Gulf Oil Corporation of Pennsylvania, as a basis of determining the commencement of employees' insurance, the amount of such, the termination of such, and premiums paid by the Gulf Oil Corporation of Pennsylvania to my company upon such. All premiums which Connecticut General Life Insurance Company received on account of the insurance in force under this policy were received from the Gulf Oil Corporation of Pennsylvania, formerly the Gulf Oil Corporation, and these premiums were paid by such corporation to my company monthly in advance. These premiums were calculated upon the number of employees then insured thereunder on the respective amounts of such employee's insurance. I am familiar with the records pertaining to the issuance and cancellation of the insurance under group policy G5039R, as evidenced by certificate R23558

in the name of John Boseman, said party so named being a former employee at Port Arthur, Texas, of the Gulf Refining Company. The Connecticut General Life Insurance Company received notice that John Boseman had become insured under group policy G5039R from the Gulf Oil Corporation of Pennsylvania; this notice came from Pittsburgh, Pennsylvania, from the oil corporation, which sent all such notices, and the date of receipt was probably within a few weeks after April 1, 1932. This notice indicated that John Boseman had become insured under this policy on April 1, 1932, and that his insurance was in the amount of $4000.00. The Gulf Oil Corporation of Pennsylvania paid to the Connecticut General Life Insurance Company premiums upon the insurance in the name of John Boseman under policy G5039R for a period commencing April 1, 1932, until the date of the termination of such insurance. In conformity with such notice from the Gulf Oil Corporation of Pennsylvania the Connecticut General Life Insurance Company issued a certificate in the name of John Boseman under policy G5039R, which certificate was issued to the Gulf Oil Corporation of Pennsylvania in accordance with the terms of the policy. The number of the certificate was R23558, and was issued about May 1, 1932. The certificate was delivered to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, on

or about that date. Our records reflect that John Boseman first became insured under group policy G5039R on April 1, 1932.

"The Connecticut General Life Insurance Company received notice from the Gulf Oil Corporation of Pennsylvania that all insurance under group policy G5039R (as evidenced by certificate R23558) in the name of John Boseman had been cancelled; and this notice stated that this insurance had been cancelled on October 8, 1932; this notice in writing was in the form of an original registration card sent in by the Gulf Oil Corporation of Pennsylvania from the home office of that corporation in Pittsburgh, Pennsylvania, to the home office of the Connecticut General Life Insurance Company in Hartford, Connecticut, accompanied by a letter from Mr. H. J. Smith, Assistant Treasurer in charge of insurance for the Gulf Oil Corporation of Pennsylvania and affiliated and subsidiary companies. This registration card was destroyed in accordance with our usual practice after the information contained thereon had been transferred to a duplicate original registration card, which is our permanent record relating to this insurance. I am unable to attach the original registration card because it was destroyed shortly after it was received by the Connecticut General Life Insurance Company. This card gave the date upon which our records should show that such employee's insurance under

group policy G5039R had been cancelled, and the date so given was October 8, 1932. This notice was actually received on December 27, 1932, from the Gulf Oil Corporation of Pennsylvania as to the cancellation of John Boseman's insurance. A few days after December 27, 1932, the cancellation of the insurance in the name of John Boseman under group policy G5039R was entered upon the permanent records of the Connecticut General Life Insurance Company showing such cancellation effective as of October 8, 1932. I am attaching hereto the original record of the Connecticut General Life Insurance Company relating to the insurance of John Boseman under group policy G5039R, certificate R23558. The cancellation relating to the original amount of insurance, as well as all increases, was accordingly entered upon all insurance in the name of John Boseman under group policy G5039R. A premium charge on account of this insurance in the name of John Boseman for the months of October, November, and December, 1932, had prior to the receipt of such notice of cancellation from the Gulf Oil Corporation of Pennsylvania been made against such oil corporation and had been by it paid. This charge would have been sufficient to cover the cost of the insurance in the name of John Boseman to December, 1932, had the insurance not been cancelled prior to that time. The amount of this charge was $9.00. This overcharge or

unearned premium on account of the insurance of John Boseman under policy G5039R was refunded to the Gulf Oil Corporation of Pennsylvania by a credit memorandum dated December 31, 1932, and sent to the Gulf Oil Corporation to be applied against future premiums. The amount of this refund was $9.00 and was made to the Gulf Oil Corporation of Pennsylvania on December 31, 1932, by credit memorandum, which could be applied against future premiums under policy G-5039R. After the cancellation of the insurance under group policy G5039R on John Boseman as evidenced by his certificate R23558, the Connecticut General Life Insurance Company never received any notice from the Gulf Oil Corporation of Pennsylvania that John Boseman was again entitled to insurance under such group policy or that such employee was entitled to have his insurance reinstated under such group policy. My company never received, after October 8, 1932, from the Gulf Oil Corporation of Pennsylvania, or anyone else, any notice or request for my company to make any entry upon its records showing that John Boseman had again become insured under such group policy and never received any request to issue a new certificate of any amount or number in the name of such employee under such group policy, and the Connecticut General Life Insurance Company after that date never made any entry in its records to show new insurance or any reinstated insurance in the name of John Boseman under such policy, and never issued any new or additional certificate in any number or in any amount, and never reinstated

any certificate in the name of John Boseman or in his favor under group policy G5039R. The Connecticut General Life Insurance Company never retained any premium in any amount for any insurance in favor of or upon John Boseman under group policy G5039R for any period after the effective date of the cancellation of such employee's insurance as hereinbefore stated by me. I am attaching hereto a copy of the credit memorandum from my company to the Gulf Oil Corporation of Pennsylvania showing refund for unearned premium upon the insurance in the name of John Boseman under group policy G5039R as evidenced by certificate R23558."

The credit memorandum was offered in evidence and was as follows:

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

Group Department
Credit Memorandum

Hartford, Conn.,

Dec. 31, 1932

"To Gulf Oil Corporation of Pennsylvania
Pittsburgh, Penn.

Group Policy G5039R
Agency Home Office

Att. H. J. Smith, Asst. Treas.
"We have credited your account with terminations as follows: No. R23558. Name, Boseman, J. 15 Pt. Arthur Refry. Amount, 4000. Refund. Pro Rata Refund, 9.00.

"This memorandum is to be kept on file until the end of the settlement period when it should be checked up with the statement to verify its accuracy."

(Said credit memorandum contained credits with reference to various other insured employees whose insurance had been cancelled but who are not here involved.)

Mr. Tully's testimony continued:

"The Connecticut General Life Insurance Company has never had effective a certificate R23558 under group policy G5039R in the name of anyone other than John Boseman.

"The Connecticut General Life Insurance Company was notified that the employment of John Boseman with the Gulf Refining Company had terminated. This termination of employment was indicated by a notice of cancellation of insurance received from the Gulf Oil Corporation of Pennsylvania in the form of a letter dated December 22, 1932, from H. J. Smith, Assistant Treasurer, in charge of insurance for that corporation, which was accompanied by a registration card, and I am attaching hereto the duplicate original of this card and a photostatic copy of this letter."

The card and letter were offered in evidence by the defendant, which were as follows:

"Pittsburgh, Pa.
December 22, 1932
Received Dec. 27, 1932
Group Dept.

"Mr. W. Bjorn, Supt.,
Conn. Gen. Life Ins. Co.,
Hartford, Conn.

Dear Sir,

We are enclosing herewith two hundred and seven Cooperative registration cards for cancellation and one hundred and twenty one registration cards which represent additions, kindly issue certificates for same.

Yours very truly,
(signed) H. J. Smith,
Assistant Treasurer,
In Charge of Insurance."

The card was offered in evidence and showed as follows:

"John Boseman — Policy Date 4/1/32 — Policy G5039R—Amount of Insurance $4000.00—Certificate R23558—Insurance Ends 10/8/32."

Mr. Tully's testimony continued:

"The card as above shown indicated the cancellation of the insurance of John Boseman as of October 8, 1932, which was presumably the date of termination of employment. The Connecticut General Life Insurance Company received notice on December 27, 1932, that the employment of

John Boseman with the Gulf Refining Company had theretofore terminated; this notice came from the office building of the Gulf Oil Corporation of Pennsylvania, Frick Building Annex, Pittsburgh, Pennsylvania, and was sent by H. J. Smith, Assistant Treasurer, in charge of insurance for the Gulf Oil Corporation of Pennsylvania. After the date of cancellation of John Boseman's insurance under such policy, as was evidenced by certificate R23558, and after notice of cancellation of his employment as above shown, the Connecticut General Life Insurance Company never received any notice from anyone stating or informing such insurance company that John Boseman was again an employee, if he ever was such, of the Gulf Refining Company of Port Arthur, Texas, at any time or for any period thereafter. Neither the Connecticut General Life Insurance Company nor any representative of same made any inquiry, prior to the time that it entered upon its records that an employee was insured under group policy G5039R or G5039 or G5545, nor prior to the time that such company issued a certificate in the name of an employee under said policies, and each of them, and in no way concerned itself with whether or not the employer of such employee had taken any application, if there was ever such, from such employee, or had ever taken any payroll deduction order, if such was ever taken, from such employee who was to become insured. The

Connecticut General Life Insurance Company never authorized or permitted the Gulf Oil Corporation of Pennsylvania or any of its affiliated or any of its subsidiary companies, or any of the officers or employees of either of said companies, to act for or on behalf of the Connecticut General Life Insurance Company, or to in any way bind the Connecticut General Life Insurance Company with reference to the matters arising under or pertaining to group policy G5039R and G5039 and G5545, and the various employees' insurance thereunder. The permanent records of the Connecticut General Life Insurance Company relating to the insurance of John Boseman and its cancellation have been heretofore (and heretofore set out in full in this Bill of Exceptions) attached to my answers as requested. The photostatic copies attached (heretofore set out in full in this Bill of Exceptions) of the other records are true and correct reproductions of the originals. The original records from which such copies were taken were and are kept in the usual and customary course of business of the Connecticut General Life Insurance Company, and such are the permanent records of such company. It is not practicable to attach the original records instead of the photostatic copies where photostatic copies have been attached, for the reason that they relate to the insurance of employees and ex-employees other than John Boseman and are necessary for the proper

conduct of the business of Connecticut General Life Insurance Company. No employee of the Gulf Oil Corporation of Pennsylvania or of its subsidiary or affiliated companies was ever insured under policy G5039 and G5545 at the same time they were insured under group policy G5039R. The Connecticut General Life Insurance Company never received from John Boseman or anyone else in his behalf, an application for the conversion of his insurance under either group policy G5039, G5545 or G5039R. The amount of John Boseman's insurance under policy G5039R was $4,000.00 during all the period from April 1, 1932, to October 8, 1932, His insurance was never in excess of this amount and was, of course, cancelled as of October 8, 1932."

Thereupon, DR. JAMES W. LONG was called as a witness on behalf of the defendant, and after being duly sworn, testified as follows:

"I am a physician and surgeon. I am a graduate of an accredited medical school or college, holding the degree of Doctor of Medicine from such school. I have a license to practice my profession in the State of Texas. I have been engaged in the practice of medicine since 1926. I am employed by the Gulf Refining Company at Port Arthur, Texas, as plant physician and surgeon. My time is fully occupied with those duties so that I do not engage in the general practice.

Among my other duties, I am required to make examinations of applicants for employment, and the employees in regard to whether their physical condition is such that they can remain at work, or be hired from time to time. I examined a man named John Boseman the first time on June 24, 1931. I again examined this man on March 30, 1933. As to the occasion for that last examination, John Boseman brought a slip from the employment office on that day. The examination of March 30, 1933, showed that he weighed 136 pounds, had temperature of 98, pulse 80, blood pressure 140/80, vision in each eye was 20/20; he had a relaxed bulging right inguinal ring, which in my opinion predisposed him to a hernia. He had a scar in the left groin where he had had a hernia operation, he said, in Galveston, Texas, at the Sealy Hospital; the operation appeared to be a successful one and in a healed condition. John Boseman did not pass my examination for employment. The reason for same was because of the relaxed bulging right inguinal ring, which in my opinion constituted a weakness that might develop into a hernia. He did not go back to work after my examination; I did not tell him that in my opinion he was physically unable to work. The reason that he did not go back to work after my examination was that he refused to sign an acknowledgment stating that he did have this weakness and that it

had been explained to him. I explained to him that his condition was all right with the exception of this predisposition to hernia and that he would be predisposed to it upon violent exertion. I told him that if he signed this acknowledgment, or otherwise, he would pass. He did not sign it, that is the entry acknowledging his predisposition to hernia. This predisposition was on the right side. There was only one thing that I could do and that was to fail him on the examination. Had he signed it, I would have passed him."

Cross Examination by Mr. Howell.

"The acknowledgment with reference to hernia was one of the usual acknowledgments that I had the men to sign there when I found that condition; I did not have him sign it on my own authority, but on the authority of the plant manager. The instrument he was requested to sign does not specify anything except a hernia. It further states that he agreed to release any claim that he might have by reason of that. Unless he had executed that instrument I could not have passed him. Such instrument is the only one he would have had to have signed to Mr. Dobbs, the employment agent there, before Mr. Dobbs would have hired him. He would not have had to sign a complete release. This is the only instrument that I know anything about that he would have had to sign.

"He said that in 1926 he had had an operation on the left side, left groin—for hernia. He had that same hernia condition in 1931 when I examined him. I permitted him to continue work with it, as he was working at that time, those who were working, regardless of the disability found, if they were actively employed at the time of the first examination, and unless it was something very serious, like a very high blood pressure, or heart trouble, their jobs are not interfered with in any way."

MR. A. L. VANDEVENDER, then called as a witness for the defendant, and after being duly sworn, testified as follows:

Direct Examination by Mr. Cecil.

"I live at Port Arthur, Texas. My position is fire chief of the Gulf Refining Company at Port Arthur; I was assistant fire chief from May, 1925, up until a year and a half ago, when I became fire chief. I know a colored man named John Boseman. I became acquainted with him through the fact that he was working directly and indirectly under me; he was in that department, that is, the fire department, as a laborer. He worked under me from 1925 until he got laid off in 1932. He worked every day, eight hours a day until the NRA went into effect. He was doing miscellaneous labor, grass cutting, and cleaning up the pump house. I had occasion to see

and observe him two or three times a day. I had occasion to talk to him during the time he was working, if I had some orders to give him or something like that. From 1925 and 1926 up until 1932, during the time I was in charge of Boseman's work, he never complained directly to me of being sick or unable to do his work; he was a good worker. I saw him from day to day and he appeared to be able to do his work; he never complained."

Cross Examination by Mr. Howell.

"As to whether or not I have ever been issued a certificate under group policy G5039R by the Connecticut General Life Insurance Company, I have one—I could not say if it is in that particular form or not, I couldn't be positive whether it is like that or not. I never did pay much attention to that. Those policies were mailed directly to the men. They were mailed to them or received by them in the office or something like that. John Boseman did general labor work in the fire department. He has been there ever since I have been there. At the Gulf Refining Company negroes do that work, as it is not a class of work that the white laborers do. When he went back to work in 1933 he was not put in the fire department. I was the one that notified him that he was going to be laid off in 1932. I received those instructions from the head of-

fice there. They just told us to let off so many men and in doing such I took in consideration, to a certain extent, the length of service that the men had with the company and to a certain extent the ability of the man as a worker, and his physical capacity. John Boseman was one of the men that I laid off."

Witness excused.

MR. T. J. BABIN was then called as a witness in behalf of the defendant, and after being duly sworn, testified as follows:

Direct Examination by Mr. Cecil.

"I live at Port Arthur, Texas, and work for the Gulf Refining Company as assistant fire chief under Mr. Vandevender and have occupied that position since September 1, 1933. Before that time I was a truck driver in the fire department. I know the colored man named John Boseman. I got acquainted with him while working in the fire department. He was in the department there when I was employed there and I have been in the department around ten years. During that period of years we worked in the same department I had occasion to see this man frequently; I was doing shift work and I would see him in the mornings. I would see him from time to time or from day to day and see him about his work occasionally. As far as I know he did his work. He never complained to me at any time

of being sick or unable to do his work. As to whether or not he appeared a normal well man or a sick man—he seemed to be all right; he was able to do his work."

Cross Examination by Mr. Howell.

"I was not the foreman when he was working there. There was not any reason that I know of for him to complain to me about any sickness or actual illness that he might have. I talked to him just in the mornings, during working hours and afterwards. I would see him around there. He was a negro employee there in the same department where I was, and if I had something I wanted him to do, I would go to his foreman and tell the foreman that I wanted Boseman to come over there and do that. I gave Boseman no instructions about it and what conversation I had with him was generally just talking. He had for years, as much as I know of, been a good faithful worker there at the Gulf Refining Company. As far as I know, everybody respected him as a negro and for his ability to work. There was another negro in that department working there at that time. I don't know how long this other negro was there, but he was there when I went to work. He was let out at the same time as John Boseman.

"I had a certificate under this Connecticut General Life Insurance Company policy No.

G5039R, that one that I made application for some time in March, 1932, and it was delivered about May, 1932. That was a policy similar to this (indicating the certificate in the name of John Boseman, hereinbefore set forth in full). I don't know anything about John Boseman except that he was a good faithful worker."

DEFENDANT'S MOTION FOR INSTRUCTED VERDICT.

Be it further remembered that upon November 12, 1934, at the conclusion of the evidence in this case and after both sides had rested their case, and prior to the time any argument had been made to the jury in this cause and prior to the time the court had given any charge to the jury in this case, and at a seasonable time, the Connecticut General Life Insurance Company made its motion that the court instruct the jury to return a verdict in its favor in this cause, because of each and all of the following reasons and specifications then and there filed and presented to the court:

(a) "The undisputed evidence in this case shows and reveals that the plaintiff did not give notice in writing to the Connecticut General Life Insurance Company of any claim by him under said policy G5039R within sixty days after the termination of his employment with the Gulf Refining Company, but instead, that the first notice given by the plaintiff of such a claim to this

defendant was more than six months after the termination of his employment; said policy providing:

> 'And no claim for permanent total disability incurred by any employee during his period of employment shall be paid after termination of such employment unless such employee gave written notice of such disability to the Company (Connecticut General Life Insurance Company) during the said period of employment or within 60 days thereafter.'

(b) "This defendant in moving for such instructed verdict says that said provision for notice was valid under the laws of the State of Texas, but regardless of whether or not such was valid under the laws of the State of Texas, this defendant says that said policy G5039R and plaintiff's insurance thereunder were each and both subject to the laws of the State of Pennsylvania, and should be interpreted in accordance with the laws of such state, and that such provision was valid under the laws of the State of Pennsylvania and should be upheld in this court and the jury instructed to return a verdict for this defendant.

(c) "This defendant reqnests the court, still relying upon its request for an instructed verdict upon the principal amount involved in this case, to-wit, Four Thousand ($4,000.00) Dollars

as plaintiff's insurance, that if such relief should be refused to this defendant that nevertheless the jury should be instructed to return a verdict for this defendant and against the plaintiff as to any attorneys' fees and penalties in this case, because the undisputed evidence shows that the contract of insurance involved in this suit is a Pennsylvania contract, and should be interpreted under the laws of such state, and that no attorneys' fees and penalties can be collected upon a contract of insurance under the laws of the State of Pennsylvania, where such contract is executed, nor can such be collected under the laws of the State of Texas when the contract was executed in the State of Pennsylvania.

"Wherefore, this defendant requests the court to instruct the jury to return a verdict in its favor in this cause and against the plaintiff for all sums sought in this action, and in the event such motion is overruled, and still insisting upon such, this defendant requests the court to instruct the jury to return a verdict in its favor concerning the request for attorneys' fees and penalties in this cause."

And when said motion was presented and urged, the following took place:

The Court: "I am not going to take up any time of the jury while you are arguing it, because I can control that matter just as well after a verdict as before."

Be it further remembered that the court thereupon refused to rule upon said motion for instructed verdict by the defendant and each ground thereof as above set forth, but instead, specifically reserved decision upon same, and each ground of same; and thereafter the case was submitted to the jury and the verdict of the jury taken specifically subject to the future ruling and action of the court upon said defendant's motion for peremptory instruction and each ground thereof.

Motion for Findings of Fact and Declarations of Law.

Be it further remembered that upon November 12, 1934, immediately after the court had refused to rule upon defendant's motion for instructed verdict, and each ground thereof, as hereinbefore set forth, but had instead, reserved action upon same until after the verdict of the jury, the defendant, Connecticut General Life Insurance Company, then and there filed, presented and urged in open court, prior to any argument or charge to the jury, and at a seasonable time, its motion and request for findings of fact and declarations of law upon said matters and points upon which the court had refused to rule, and upon such questions contained in defendant's motion for instructed verdict, concerning which the court had specifically reserved action until after the verdict of the jury, said motion by the defendant being as follows:

"Comes now the defendant, Connecticut General Life Insurance Company, after the conclusion of all the evidence in this cause, and prior to the time the argument has been made to the jury and prior to the time that any charges have been given to the jury, and in open court, specifically subject to its motion for instructed verdict, heretofore made and presented in this cause, and now moves and requests the court for the following findings of fact upon the following matters, and conclusions or declarations of law upon the following matters:

"Findings of Fact.

1.

"That group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania and is subject to the interpretation in this court in accordance with the laws of the State of Pennsylvania.

2.

"That the plaintiff herein wholly failed and omitted to give any notice of any claim to the Connecticut General Life Insurance Company in writing within 60 days after the termination of his employment on October 8, 1932.

3.

"That the termination of plaintiff's employment, within the meaning and terms of group

policy G5039R and the certificate issued to plaintiff thereunder, occurred upon October 8, 1932.

"Conclusions or Declarations of Law.

1.

"That the provision in group policy G5039R and the certificate issued to the plaintiff thereunder, was and is valid under the laws of the State of Texas and failure to comply with such provision defeats a recovery by the plaintiff in this cause.

2.

"That group policy G5039R and plaintiff's insurance thereunder being subject to interpretation in accordance with the laws of the State of Pennsylvania, and the provision for notice within 60 days in said group policy G5039R, being valid under the laws of the State of Pennsylvania, is enforceable in this proceeding and plaintiff's failure to comply with such provision defeats a recovery by him in this cause.

3.

"That plaintiff's insurance under group policy G5039R, as well as policy G5039R, representing a Pennsylvania contract, entered into under and in accordance with the laws of that state, and attorneys' fees and penalties not being allowed by the laws of the State of Pennsylvania, the plain-

tiff herein is not entitled to recover any attorneys' fees and penalties in this cause.

"Wherefore, this defendant respectfully prays the court, subject to its motion for an instructed verdict, that the court make and file such findings of fact and conclusions or declarations of law."

Be it further remembered that when said motion for findings of fact and declarations of law as above set forth was duly filed, presented and urged to the court on November 12, 1934, immediately after the court reserved action upon defendant's motion for instructed verdict as hereinbefore set forth, and each ground thereof, and prior to any charge or argument to the jury, and at a seasonable time, the court then and there refused to rule upon such motion for findings of fact and declarations of law, but, instead, specifically reserved action upon said motion and each ground thereof, and subject to the future action of the court upon such motion for findings of fact and declarations of law, the case was submitted to the jury, and the verdict of the jury, subject to the future action of the court on said grounds reserved by the court, was thereafter accepted.

PLAINTIFF'S REQUESTED CHARGES.

Be it further remembered that prior to the time the court gave any charge to the jury, the plaintiff requested in writing to the court that the court charge the jury as follows:

"Comes now John Boseman, plaintiff in the above styled and numbered cause, and requests the court to instruct the jury, in connection with the definition of the terms 'total' and 'permanent total disability' as contained in the policy No. G5039R, that under such terms the insured employee need not be absolutely disabled from doing any labor or work but where he is so incapacitated that he is prevented from performing substantially to a material extent any and every part of the business pertaining to his occupation, or such disability as ordinary care in the preservation of his life and health would require him to desist from performing thereof.

"Plaintiff, John Boseman, requests the court to instruct the jury as a matter of law that the contract number G5039R, sued on herein, is a Texas contract and that the provision with reference to the sixty day notice contained therein is void and that under the undisputed facts in this case the plaintiff is entitled to recover twelve per cent penalty and reasonable attorney's fees not to exceed one thousand ($1,000.00) dollars.

"Wherefore, plaintiff respectfully requests the court to charge the jury in the above particulars."

And said charges having been presented to the court, the court refused the request of the plaintiff to so instruct the jury or to give to the jury either in-

struction contained in such request, and thereupon the plaintiff excepted.

CHARGE OF THE COURT.

"Now, gentlemen of the jury, in this case the plaintiff sues to recover upon a contract and policy of insurance insuring the plaintiff against permanent and total disability. There is a provision in the contract, I think, insuring against the contingency of death but that is not involved here, so that the only question for you gentlemen is the claim of total and permanent disability under this contract. It appears that there is no question or dispute between the parties about the contract or policy of insurance having continued in full force and effect up to and inclusive of, at least, the 8th day of October, 1932. Now, the policy provides for recovery in the event of total and permanent disability of the insured occurring on or before the 8th day of October, 1932. The policy or contract by its terms provides that any employee, and that means the plaintiff here, John Boseman, shall be deemed totally disabled within the meaning of the policy if injuries, sickness or disease continuously prevent the employee from performing any and every duty pertaining to his occupation. Now, the policy or contract further provides that if such total disability above defined begins before the age of sixty, and there is no question here but what this man is under the age of sixty, and presumably

during the life of such employee, will prevent the employee from pursuing any occupation for wages or profit, such employee shall be deemed permanently and totally disabled within the meaning of the policy or contract. Therefore, the sole question for the determination of you gentlemen is as to whether or not the plaintiff has established by a preponderance of the credible evidence that on or before the 8th day of October, 1932, he became or was on or before that date totally and permanently disabled. If the plaintiff has so established by a preponderance of the credible evidence, he should have a verdict; if he has not, he should not. Now, gentlemen, in this as in all other civil cases the burden of proof is upon the plaintiff to establish to your satisfaction and by a preponderance of the credible evidence his right to recover, that is, to show to your satisfaction by a preponderance of the credible evidence the fact that he became totally and permanently disabled on or before the 8th day of October, 1932, and remained that way. Now, by 'a preponderance of the credible evidence' is not necessarily or at all meant the greater number of witnesses but it means the greater weight and degree of testimony which you gentlemen find to be credible, that is, to be believed. You gentlemen are the exclusive judges of the credibility of the witnesses and of the weight to be given to their testimony and of the facts established from such credible evidence.

"Now, I shall probably have occasion in the course of this charge to make certain references to certain phases of the testimony but I caution you gentlemen that by such reference to the testimony I have no intention whatsoever of emphasizing either one side or the other's view of the testimony or what it means, and I certainly have no intention of invading the province of you gentlemen in determining what is the credible testimony in the case and from that the facts.

"Now, the plaintiff is not entitled to recover unless he became totally and permanently disabled while the contract of insurance was in force, that is, on or before the 8th day of October, 1932. The policy does not cover or insure against temporary disability even if such temporary disability is total in character. It does not cover permanent disability if such permanent disability is anything less than total and a man is totally disabled within the meaning of the contract sued upon if by reason of injuries or diseases he is continuously prevented from performing the duties of some gainful occupation for which he would otherwise be qualified by reason of education or training or experience.

"Now, gentlemen, as this whole claim revolves about that question of total and permanent disability I am going to repeat to you gentlemen that portion of the charge by saying that a man is totally disabled within the meaning of the contract

sued upon if by reason of injuries or disease he is continuously prevented from performing the duties of some gainful occupation for which he would otherwise be qualified by reason of his education or training or experience. Now, 'total disability' is deemed to be permanent when it is founded upon conditions which render it reasonably certain that such total disability, if any, will continue throughout the life of the person suffering from such disability. So, if the insured became ill or diseased or was injured while the policy or contract was in effect and thereby was totally disabled, nevertheless, you cannot find a verdict in his favor unless at some time before the policy expired or terminated, that is, on or before the 8th day of October, 1932, there was not only such a total disability, but that the same was of a type and character and the result of conditions in his body which made it then appear that in reasonable probability such total disability, if any, would continue throughout the remainder of his lifetime.

"Now, gentlemen, the fact that the insured is suffering from some disability or was during the life of the contract suffering from some disability short of total does not entitle him to recover. If he was suffering from some impairment which made it difficult for him to obtain a job or to engage in an occupation which would bring him a livelihood that does not come within

the terms of the policy or contract. The fact that he is suffering from some disability or disease or suffering so that it would put him in a condition which made it difficult for him to compete with others or handicapped him to some extent is not sufficient, if, notwithstanding the handicap, he might compete with others similarly situated or engage in an occupation which would give him a livelihood, because the jury in determining these things, under the terms of this policy, must consider humanity in the whole and by and large. The plaintiff cannot recover if it is merely shown that his condition is such that he cannot or would not compete with persons better equipped than he was, better educated, better mentally or physically endowed. If his condition was not such a disability which prevented him from competing with the average run of mankind in the class or walk of life to which he was fitted and to which he belonged, then it would not be total and permanent disability within the meaning of this contract. If, competing with the average run of humanity in the walk of life or in the station in life for which his equipment physically or mentally entitled him, if situated as he was and competing with the general run of humanity he could get and hold a job or make a livelihood, although he might suffer inconvenience or would have to put out more or greater effort than some other person had to do, that is not total disability unless the

effort he was compelled to put out or the suffering he had to endure or any inconvenience he suffered went to the extent of endangering or destroying his health. If it was such that the efforts which he made to obtain a job or hold it or engage in the carrying on of a livelihood had the effect of making it dangerous to his life or health, then, nevertheless, he would be permanently and totally disabled within the meaning of this contract. If the very efforts which he had to put out to hold a job and carry on a livelihood brought on a condition which would likely produce his death or necessarily injure his health, or if his condition was such that he could not make those efforts without inevitably bringing on that condition, then he is, nevertheless, under the law, totally disabled although he could do some work.

"Now, gentlemen, this proposition last enunciated must not be confused with the proposition that if you believe that on or before the 8th day of October, 1932, he was partially disabled and as time went on he became totally disabled, that you could allow him to recover because, of course, you could not. The whole undertaking of this contract, the whole obligation of it, the whole rights and duties of the parties to it are defined in it by the terms of the contract and are limited to a consideration of total and permanent disability, as those terms have been defined to you, and occurring on or before the 8th day of October, 1932,

because that is the limit of the contractual undertaking of this defendant and in this, as in any other case of contract, the parties to the contract are not bound except to the extent that they have undertaken to become bound and the only extent to which the defendant has undertaken to become bound under this contract is for the happening of that one contingency of total and permanent disability occurring on or before the 8th day of October, 1932. It is not sufficient for the plaintiff to show that there was something wrong with him in October of 1932, and that that condition commenced to become aggravated and to increase and after a while to become matured, whether it be in November or December of '32, or January of '33, or any period in '33, or any period subsequent to October 8, 1932. It must appear from the evidence and not from conjecture, gentlemen, that the plaintiff, by reason of either the injuries which have been elaborated in the evidence in this case, or the disease which has been more prominently referred to in the testimony of the various witnesses, had progressed to the extent of having totally and permanently disabled the plaintiff on or before that date.

"Now, gentlemen, just briefly and in conclusion, you will understand that this contract undertakes to pay for total and permanent disability occurring on or before the 8th day of October, 1932, and that the company has not contracted to pay

for after-occurring disease, that is, disease occurring after October 8, 1932, or against the after-occurring effects of disease. The disease or injury must have at that time, that is, on or before the 8th day of October, 1932, resulted in totally and permanently disabling the plaintiff. In other words, gentlemen, it is a condition existing on or before the 8th day of October, 1932, which the defendant insures against, that condition of total and permanent disability and only that occurring or existing on or before that date.

"Now, there is one other feature of this case as to which I consider there is a dearth of testimony. I suggested the fact to counsel for both sides at the conclusion of the testimony and neither side has seen fit to elaborate that feature of the testimony and that is perfectly proper. I do not make that reference by way of criticism of either counsel. But there is little evidence in the record upon it, but notwithstanding the dearth of evidence in the record upon the question, I deem it my duty to instruct you upon this phase of the case. As I recall the testimony, and I don't attempt to recollect it clearly, gentlemen, and I certainly didn't hear all of it, but as I recall the testimony, the main testimony, the main ground of claim of total and permanent disability results from a diabetic condition admittedly existing in this plaintiff, at least, some several months or possibly a year or more after the termination of his employ-

ment with this Gulf Refining Company. I don't recall that there was any positive testimony in the case of any doctor finding that condition prior to some date months subsequent to his termination of his employment in October, 1932, and I don't recall any testimony, at least positive in character, from either side as to any steps that they have taken in regard to the treatment of this condition of the plaintiff and I don't attempt to tell you gentlemen or speculate for your benefit as to what effects treatment might have upon his condition, if any. You have heard all the medical testimony upon that feature, but I instruct you gentlemen that in this case as in all other cases any party is bound to use ordinary care for his own protection and the preservation of his life. Now, by that I mean this. First of all I will say that 'ordinary care' is purely a legal term. It is an abstraction. It is a standard of conduct that the law fixes and it just means this: That it is that degree or standard of care which a person of ordinary care or prudence would exercise under the same or similar conditions. And so I come to this proposition: That if a person of ordinary care and prudence would take the curative steps which the medical witnesses have elaborated in their testimony as necessary to correct and alleviate a condition of this kind and that such procedural methods, such steps by way of the insertion or injection of insulin and the following of a proper course of diet would have the effect of

putting this man in a position where he could follow the substantial task of a workman or do the substantial task of any job for which he is qualified and fitted by training and education and experience, then he cannot by a failure to follow such steps just say that he will produce his own condition of total and permanent disability, because in this situation as in any other every man is bound to that degree or rule of reasonable care for the preservation and protection of his own life and well-being. He cannot speculate and fail to follow proper procedural methods that might alleviate that condition and say that he is going to make it a condition of total and permanent disability and then charge the defendant in this case with his own negligence; but upon the other hand if you gentlemen find that although he did take such steps as a person of ordinary care and prudence would have taken and yet that those steps would not be effective to restore him to a condition where he could perform the substantial task of a workman in such a way as to obtain employment and retain his employment after it is obtained, then the failure to take those steps would not enter into the picture because it does not make any difference whether he does or does not take those steps if, in the last analysis, they would not have the effect of putting him in a condition where he could work and compete with others in any livelihood or occupation for gain or profit, because, of course, it does not make

any difference how much care or caution a man uses if he meets the standard that is required of him by law if it does not have the effect of restoring his condition of health or body then it is just something that is not required of him because even though he takes the steps he would still be totally and permanently disabled, if you find that he is in such condition from the credible evidence in this case.

"Now, gentlemen, if, in the light of these instructions, you find from the credible evidence or a preponderance of the credible evidence that the plaintiff has shown to your satisfaction by such standard of proof his right to recover then you should find a verdict for the plaintiff. If you find that the plaintiff has not discharged that duty or burden resting upon him, then it would be your duty to find a verdict for the defendant. In any event, and in any form of finding the form of your verdict will be in this form: 'We, the jury, find in favor of the .....' indicating in the blank either 'plaintiff' or 'defendant' according to whom you find for and let that verdict be signed by one of your number as foreman. Your foreman you will select after you retire to consider of this case.

"Now, I want to advise you gentlemen before you have any opportunity for exceptions as to these instructions that I am knowingly and with aforethought expressly refraining from a charge upon

the question of notice in this case because I apprehend that I can control that question after verdict as well as I can before and I am just leaving that open so if you gentlemen have any exception to that failure or any requests in regard to it or any other exception to any other portion of the charge I will hear from you now."

Mr. Howell: "You say you will hear from me first, Your Honor?"

The Court: "All right."

Mr. Howell: "Do you want me to state them?"

The Court: "Yes."

Mr. Howell: "The plaintiff wants to take an exception to the charge of the court because the court fails to charge the jury with reference to the time that the policy was in force; that under the undisputed testimony here as applied to the conditions of the policy that the contract remained in force until and after March 30, 1933, because said contract provided, among other things, that if the employee leaves the employer's service except a temporary lay-off on account of work and enters the service of another corporation, firm or individual, even temporarily, his employment shall thereupon terminate. If any employee is temporarily laid off on account of lack of work and his insurance is cancelled his insurance may be reinstated upon his return to active service and his employment record will be considered

continuous from the original employment date notwithstanding the fact that he was not working in the meantime."

The Court: "I am mindful of that too."

Mr. Howell: "I just want to preserve my record, Your Honor."

The Court: "Yes, you preserve your rights, certainly, I know, but I see no occasion for a charge on that ground."

Mr. Howell: "And further because the contract provides that in the case any employee is absent from duty due to ill health or other disabling cause and not employed elsewhere during such absence he shall be considered as continuing in the employer's service unless and until the employer informs the company that his employment has terminated, as the undisputed facts in this case reflect that at all times from October 8, 1932, until the 30th day of March, 1933, that the plaintiff herein under the undisputed testimony was sick and in ill health under the terms of this policy. Plaintiff further makes the exception to the court's definition of total and permanent disability with reference to the failure of the court to charge the jury that if the employee, to-wit, the plaintiff in this case—I believe I filed a request which will account for that, though. That is all we have, Your Honor. We filed that in the form of a request and I believe that will take care of that exception."

The Court: "Well, I read that over when you handed it to me and there is nothing in that that I haven't given in my verbal instructions."

Mr. Howell: "All right."

(Counsel for defendant confers with the court.)

The Court: "Counsel for the defendant excepts to the court's failure to charge upon the question of notice. Any other exception?"

Mr. Cecil: "That is all."

Mr. Howell: "That is all."

The Court: "All right, gentlemen, you may retire to consider of your verdict."

Be it further remembered that after said charge to the jury the jury retired and after the consideration of its verdict thereafter returned into open court and filed its verdict on November 12, 1934, as follows:

"We, the jury, find a verdict in favor of the plaintiff.

Austin A. Kelly, Foreman,"

which verdict was accepted by the court and ordered filed subject to the future decision and determination of the court upon the points theretofore specifically reserved concerning defendant's motion for an instructed verdict and its motion for findings of fact and declarations of law.

Be it further remembered that thereafter the court continued open the October, 1934, regular term of court for all purposes concerning this case and

suit, including the determination by the court of the points reserved upon submitting the case to the jury.

MOTION OF DEFENDANT FOR JUDGMENT NON OBSTANTE VEREDICTO.

Be it further remembered that the defendant did upon November 16, 1934, file and present, after proper notice, its motion for judgment in open court in this suit in its favor, which motion was as follows:

"Comes now the defendant, Connecticut General Life Insurance Company, after the jury has returned its verdict in the cause above captioned and moves the court that it enter a judgment in favor of this defendant in this cause, in spite of the findings and verdict of such jury, for the following good and sufficient reasons:

1.

The undisputed evidence in this case shows that the plaintiff was not totally and permanently disabled within the meaning and terms of group policy G5039R and the certificate issued to him thereunder on or prior to October 8, 1932, the date upon which his insurance under such policy was cancelled and terminated.

2.

That the plaintiff herein has failed to show by a preponderance of the evidence that he was totally and permanently disabled on or prior to October 8, 1932, within the meaning and terms of

group policy G5039R, and the certificate issued to him thereunder, his said insurance under such policy having lapsed and terminated on said date, to-wit, October 8, 1932.

3.

The undisputed evidence in this cause showing that group policy G5039R contained the following provision for notice, to-wit:

> 'No claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment, unless such employee gave written notice of such disability to the company during the said period of employment or within 60 days thereafter.'

And the further undisputed evidence revealing that the plaintiff did not give such notice within such 60 days, but instead, did not give same until more than 6 months after the termination of his employment on October 8, 1932; and said provision being valid under the laws of the State of Texas and under such laws of such nature as would defeat plaintiff's claim, this defendant should be given a judgment.

4.

This defendant says it should be given a judgment because of such provision for notice quoted in the preceding paragraph, and the failure of the plaintiff to comply therewith, because re-

gardless of whether or not said provision for notice is valid under the laws of the State of Texas, that group policy G5039R, and plaintiff's insurance thereunder, was and is a Pennsylvania contract and is entitled to be interpreted under the laws of Pennsylvania and said provision for notice is valid under the laws of Pennsylvania and if not complied with, and plaintiff having failed to comply with same in this case, defeats a claim of the plaintiff, and, therefore, this defendant is entitled to a judgment.

5.

This defendant says, still insisting upon a judgment in its favor, and concerning all amounts requested in this suit, for the reasons hereinbefore set forth, that regardless of such, it is entitled to a judgment in its favor in this cause upon plaintiff's request for attorneys' fees and penalties for the following reasons, each and all:

(a) That group policy G5039R, and plaintiff's insurance thereunder was and is a Pennsylvania contract, and subject to the laws of that state, which laws should be applied to this controversy in this court, and under the laws of such state attorneys' fees and penalties are not permitted in a suit of this character in favor of the plaintiff or his attorney, to be collected from the defendant, and, therefore, this defendant in any event is

entitled to a judgment in its favor concerning the request for attorneys' fees and penalties.

(b) Article 4736 of the Revised Civil Statutes of Texas allows only the holder of such policy of insurance to collect attorneys' fees and penalties, and the plaintiff herein was not the holder of such policy, but instead, said policy was held by the Gulf Oil Corporation of Pennsylvania, who is not a party to this suit, and, therefore, plaintiff is not entitled to recover same, but defendant is entitled to a judgment as to such.

(c) Because Article 4736 of the Revised Civil Statutes of Texas applied only to life, health and accident insurance, and this is not a suit pertaining to life, health and accident insurance, but instead, is a suit pertaining to group insurance, and furthermore, is a suit pertaining to disability insurance and not life, health and accident insurance.

(d) Because no issue has been submitted to the jury on attorneys' fees and there is no finding by the jury as to any amount of attorneys' fees in this case.

Wherefore, this defendant respectfully prays this court that judgment be entered in its favor as to all amounts sued for by the plaintiff herein for the reasons hereinbefore set forth pertaining to such, and in the alternative, and subject to its

prayer, for a judgment in its favor upon the whole controversy, it respectfully prays for a judgment in its favor as to any request by the plaintiff for attorneys' fees and penalties."

And said motion for judgment having been duly presented to the court, the court thereupon took same under advisement and withheld decision upon same, pending the court's determination of the points reserved concerning defendant's motion for an instructed verdict and its motion for findings of fact and declarations of law.

PLAINTIFF'S MOTION FOR JUDGMENT.

Be it further remembered that upon November 15, 1934, plaintiff filed and presented, after due notice to the court in open court, its motion for judgment as follows:

"Comes now the plaintiff in the above styled and numbered cause and makes application to this Honorable Court to enter judgment in favor of the plaintiff, upon the verdict of the jury and the law applicable thereto, in the principal amount of the policy, to-wit, four thousand ($4,000.00) dollars, together with twelve (12%) per cent penalty and attorney's fees in the amount of one thousand ($1,000.00) dollars.

Wherefore, plaintiff respectfully petitions this Honorable Court to enter judgment in his favor

and against the Connecticut General Life Insurance Company, in the amount of five thousand four hundred eighty ($5,480.00) dollars."

And that upon the presentation of such motion by the plaintiff, the court thereupon took same under advisement and reserved action upon the same pending the court's determination of the points reserved in defendant's motion for instructed verdict and its motion for findings of fact and declarations of law.

Be it further remembered that the defendant continued to urge to the court, and did not waive, its motion for instructed verdict upon the points reserved, its motion for findings of fact and declarations of law, and its motion for judgment *non obstante veredicto* continuously; and that the plaintiff continued to urge his motion for judgment thereafter continuously, and did not waive same; and all motions, after due and proper notice, came on for final action and determination by the court on December 26, 1935, the court not having theretofore determined same, and thereupon the court took the following action, in open court:

(a) On December 26, 1935, the court, after due consideration overruled and refused to sustain the defendant's motion for instructed verdict, and each and every ground thereof, the court having theretofore reserved action upon such motion and each ground thereof, and said action on the part of the court having been taken on the date stated, prior to decision or rendition

of judgment in the case, and the court having overruled and refused each and every ground and point reserved as above set forth, the defendant then and there in open court excepted, prior to rendition of judgment, to the action of the court on each and all of said questions and was allowed its exceptions.

(b) On December 26, 1935, prior to rendition of judgment, after the overruling of defendant's motion for instructed verdict and each ground thereof, which had been by the court reserved, the court thereupon in open court acted upon the defendant's motion for findings of fact and declarations of law filed on November 12, 1934, decision and action upon same having been reserved by the court when same were filed and presented, and in connection with such request for findings of fact and declarations of law filed by the defendant, the following action was had by the court, in open court, prior to decision or rendition of judgment, and the following exceptions were allowed as shown:

REFUSAL OF COURT TO FIND FACTS AND MAKE DECLARATIONS OF LAW.

"(1) The court refuses to find 'that group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania, and is subject to interpretation in this court in accordance with the laws of Pennsylvania.'

The court does further refuse to make the following declarations of law requested by the defendant:

(1) That group policy G5039R and the plaintiff's insurance thereunder were and are subject to interpretation in accordance with the laws of the State of Pennsylvania; and that the failure of the plaintiff to give notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment defeats a recovery by him in this cause; but instead, this court declares the law to the contrary.

(2) This court further refuses to declare as a law, as requested by the defendant, that attorneys' fees and penalties cannot be collected by the plaintiff in this suit because the contract involved is a Pennsylvania contract; but, instead, the court declares to the contrary that the contract was a Texas contract and that attorneys' fees and penalties can be collected by the plaintiff under Article 4736 of the Revised Civil Statutes of Texas.

To which action of the court in refusing to make the findings of fact as above shown, and in refusing to declare the law as stated above, the defendant in open court, upon such court's refusal on December 26, 1935, prior to rendition of judgment in this cause, excepted to each and every refusal of the court concerning such findings, and declara-

tions, and was allowed its exceptions, which are ordered filed."

Be it further remembered that the court did at the same time take the following action and allow the exception as shown:

"However, in connection with the defendant's request for specific findings of fact and declarations of law, the court does make and file, in open court prior to rendition of judgment, in response to such requests, and in response to defendant's motion for peremptory instruction, and in response to defendant's motion for judgment *non obstante veredicto*, the following findings of fact and declarations of law:

FINDINGS OF FACT.

(1) That group policy G5039R, and plaintiff's insurance thereunder, was and is a contract of the State of Texas, and is subject to interpretation in this court in accordance with the laws of the State of Texas.

(2) That the plaintiff herein wholly failed and omitted to give any notice of his claim of total and permanent disability to the Connecticut General Life Insurance Company within sixty days after termination of his employment, which occurred on October 8, 1932.

(3) That the provision found in group contract G5039R, and the certificate issued to John

Boseman thereunder, which required notice of a claim for total and permanent disability under same within sixty days after termination of employment of John Boseman, was valid under the laws of Pennsylvania.

(4) However, the fact that such provision for notice was valid under the laws of the State of Pennsylvania does not defeat this claim and cause, since same is to be interpreted under and in accordance with the laws of the State of Texas.

(5) That no attorneys' fees or penalties in a case of this character could be collected under the laws of the State of Pennsylvania.

(6) However, attorneys' fees and penalties can be collected in this suit by the plaintiff, since it is to be interpreted and tried in accordance with the laws of the State of Texas.

CONCLUSIONS OF LAW.

(1) That the provision for notice of a claim within sixty days by the plaintiff was invalid under the laws of the State of Texas and therefore not enforceable in this suit.

(2) That Article 4736 of the Revised Civil Statutes of Texas entitled the plaintiff to attorneys' fees and penalties in this suit and is applicable to this cause.

To the findings set forth in subdivisions 1, 4 and 6, under 'Findings of Fact' above and the dec-

larations of law, each and all, declared by the court, the defendant then and there in open court prior to rendition of judgment excepted to each and all of same and was allowed its exceptions."

Be it further remembered that said findings of fact above shown were not made at the request of the plaintiff.

Be it further remembered that after the foregoing action had been taken by the court upon defendant's motion for an instructed verdict, its motion for findings of fact and declarations of law, the court thereupon on December 26, 1935, overruled and refused defendant's motion for judgment *non obstante veredicto* filed in this cause on November 15, 1934, and overruled and refused each ground of same prior to the rendition of judgment in this cause, and the defendant then and there in open court excepted, prior to the rendition of judgment, to the action of the court on each and all of said grounds contained in defendant's motion for judgment *non obstante veredicto* and was allowed its exceptions.

Be it further remembered that thereafter on December 26, 1935, the court did grant the plaintiff's motion for judgment filed herein on November 15, 1934, to which action of the court the defendant then and there in open court exeepted and was allowed its exceptions.

Be it further remembered that the court did thereafter on December 26, 1935, decide said points reserved as hereinbefore shown in favor of the plaintiff

and did render and sign judgment in favor of the plaintiff therein, and the defendant then and there in open court excepted to the action of the court and further excepted to each finding of fact and declaration of law stated by the court in said judgment and was allowed its exceptions.

Be it further remembered that a regular term of the United States District Court in and for the Eastern District of Texas, Beaumont Division, came on and was duly opened on the 21st day of October, A. D. 1935, the above and foregoing motions filed by the plaintiff and defendant in said cause having not theretofore been determined by the court; that said regular term of court of the United States District Court for the Eastern District of Texas, Beaumont Division, having been convened in October, 1935, as provided by law, and upon the date so provided continued open without adjournment until after November 16, 1935, and that while said regular term of court was so open the following order was made, signed and entered by the regular judge then presiding:

"*In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. At Law No.* 1468.

OCTOBER REGULAR TERM, 1935.

"The regular term of this court now in session is continued open for all purposes and will remain in regular session, open for all business, from this date continuously until March 2, 1936.

"Done this the 13th day of November, A. D. 1935.

(Signed) RANDOLPH BRYANT,
Judge Presiding."

Be it further remembered that during said extension of the regular term of the United States District Court in and for the Eastern District of Texas, the court did, on December 26, 1935, render and enter judgment therein and did sign, render and duly enter prior to the termination of the regular term of court, commencing in October, 1935, the following order:

"*In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. At Law No.* 1468.

"Upon application made to me in the above styled and numbered cause by the defendant, Connecticut General Life Insurance Company, it is hereby ordered that the term of court in and for the Eastern District of Texas, Beaumont Division, at which judgment was rendered on December 26, 1935, in favor of the plaintiff in the suit above captioned, be and the same is hereby continued open until March 2, 1936, for the purpose of allowing the parties to prepare, file and settle their bills of exception; for the further purpose that orders may be filed and entered showing the overruling of defendant's motion for peremptory instructions, and showing the defendant's exception

to the action of the court in overruling same; for the further purpose that order may be prepared, filed and entered showing the overruling by the court of defendant's motion for judgment *non obstante veredicto* and the exceptions taken by the defendant to such action of the court; for the further purpose that orders may be prepared, filed and entered showing and allowing the exceptions of the defendant to the granting by the court of plaintiff's motion for judgment; for the further purpose that orders may be prepared, filed and entered showing and allowing defendant's exceptions to the judgment entered for the plaintiff, as well as exceptions to the findings of fact and declarations of law therein; for the further purpose that orders may be prepared, filed and entered showing the overruling by the court of the defendant's requests for findings of fact and declarations of law, and showing the defendant's exceptions thereto; for the further purpose that the court may make and file findings of fact and declarations of law, if it so desires; and for the further purpose that exceptions may be made, urged and filed by the defendant to such findings of fact and declarations of law as and when prepared and filed by the court.

"Entered this the 26th day of December, A. D. 1935.

(Signed) RANDOLPH BRYANT,
Judge Presiding."

"*In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Connecticut General Life Insurance Company. At Law No.* 1468.

"It appearing to the court that the entire charge of this court given in the suit above captioned is necessary for better understanding of the errors assigned by the defendant in said cause:

"It is, therefore, ordered that the entire charge of this court be included in the bill of exceptions.

"Done this 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
Trial Judge Presiding."

AGREEMENT OF COUNSEL AS TO BILL OF EXCEPTIONS.

It is agreed by and between counsel for the parties hereto that the above and foregoing is a full, true, complete and correct statement of all the material evidence introduced in said cause, reduced to narrative form; and that the foregoing contains the offers of counsel, the objections thereto, the rulings of the court thereon; the request of the defendant for peremptory instruction in its favor at the close of the evidence, the order of the court overruling the same, the defendant's exception thereto; the requests of plaintiff for charges, the order of the court refusing same and the plaintiff's exception thereto; the request of the defendant for findings of fact and declarations of law, the order of the court refusing same, and the defendant's exception thereto; the findings of fact and declara-

tions of law made by the court, and the defendant's exception thereto; the charge of the court, the defendant's objection and exception thereto; the motion of the defendant for judgment *non obstante veredicto*, the order of the court overruling same and the defendant's exception thereto; the plaintiff's motion for judgment, the order of the court granting same, and the defendant's exception thereto; the order of the court extending the term of court at which the judgment was entered until March 2, 1936, all in the case of John Boseman vs. Connecticut General Life Insurance Company, At Law No. 1468.

It is further agreed that same shall constitute the bill of exceptions on this appeal, that same has been corrected to meet all suggestions and objections on behalf of the plaintiff.

HOWELL & HOWELL,
Attorneys for Plaintiff.

ORGAIN, CARROLL & BELL,
Attorneys for Defendant.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division. John Boseman vs. Conneticut General Life Insurance Company. At Law No. 1468.

ORDER APPROVING BILL OF EXCEPTIONS.

It appearing that the foregoing bill of exceptions has been duly submitted to the counsel for John Boseman, and by such counsel approved, and all objections of such counsel to such bill of exceptions, prior

to approval, have been corrected, and that there are no further objections to the form or contents of said bill of exceptions; and the court having found the same to be a full, true, complete, condensed, narrative statement of all the evidence in the case; and I do further certify that the foregoing contains all the offers of counsel, objections thereto, and rulings of the court thereon, with the exception of counsel thereto; the request of the defendant for peremptory instruction in its favor at the close of all the evidence, the order of the court overruling the same, the exceptions of the defendant to such; the motion of the defendant for findings of fact and declarations of law, the order of the court overruling same, the exceptions of the defendant thereto; the entire charge of the court, with the objections and exceptions made by the plaintiff and defendant thereto, and the order of the court overruling the same; the findings of fact and declarations of law made by the court, the exceptions of the defendant thereto; the motion of the defendant for judgment in its favor *non obstante veredicto,* the order of the court overruling same, and each ground of same, and the defendant's exceptions thereto; the motion of the plaintiff for judgment, the orders of the court granting same, and the defendant's exceptions thereto; the order of the court extending the term in which judgment was entered until March 2, 1936; the order of the court requiring the charge of the court to be included in said bill of exceptions in full; as well as all the other proceedings had in the trial of the case of

John Boseman vs. Connecticut General Life Insurance Company, At Law No. 1468.

And it appearing to the court that said bill of exceptions was duly filed and presented within the time granted by the orders extending the term of the court, and in the manner required by the rules of this court, and that all the evidence, as well as all the other proceedings, included in said bill was and is necessary to present clearly the questions of law involved and the rulings to which exceptions were reserved; and that such evidence, being all the evidence, was set forth therein in condensed and narrative form, save as a proper understanding of the questions presented, required that parts of it be set forth otherwise; and it further appearing to the court that there are no local rules of court that in anywise affect the question presented that are not included in said bill; all of which so certified is ordered to be filed and become a part of the record this the 25th day of February, A. D. 1936, the foregoing bill of exceptions being allowed and approved.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. Bill of Exceptions. Filed February 25, 1936. Helen Mathews, Clerk of United States District Court. Della Ashley, Deputy.

Order of November 13, 1935, Keeping Open Term of Court.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

October Regular Term, 1935.

The regular term of this court now in session is continued open for all purposes and will remain in regular session, open for all business, from this date continuously until March 2, 1936.

Done this the 13th day of November, A. D. 1935.

Randolph Bryant,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. Order Extending Term of Court. Filed November 13, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Order of December 26, 1935, Continuing Open Term of Court.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

Upon application made to me in the above styled and numbered cause by the defendant, Connecticut General Life Insurance Company, it is hereby ordered that the term of court in and for the Eastern District of Texas, Beaumont Division, at which judgment was rendered on December 26, 1935, in favor of the plaintiff in the suit above captioned, be and the same is hereby continued open until March 2, 1936, for the purpose of allowing the parties to prepare, file and settle their bills of exception; for the further purpose that orders may be filed and entered showing the overruling of defendant's motion for peremptory instructions, and showing the defendant's exception to the action of the court in overruling same; for the further purpose that order may be prepared, filed and entered showing the overruling by the court of defendant's motion for judgment *non obstante veredicto* and the exceptions taken by the defendant to such action of the court; for the further purpose that orders may be prepared, filed and entered showing and allowing the exceptions of the defendant

to the granting by the court of plaintiff's motion for judgment; for the further purpose that orders may be prepared, filed and entered showing and allowing defendant's exceptions to the judgment entered for the plaintiff, as well as exceptions to the findings of fact and declarations of law therein; for the further purpose that orders may be prepared, filed and entered showing the overruling by the court of the defendant's requests for findings of fact and declarations of law, and showing the defendant's exceptions thereto; for the further purpose that the court may make and file findings of fact and declarations of law, if it so desires; and for the further purpose that exceptions may be made, urged and filed by the defendant to such findings of fact and declarations of law as and when prepared and filed by the court.

Entered this the 26th day of December, A. D. 1935.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court in and for the Eastern District of Texas, Beaumont Division. Order Keeping Open Court. Filed December 26, 1935. Helen Mathews, Clerk United States District Court. By Della Ashley, Deputy.

Petition for Appeal and Order Allowing Same.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

To the Honorable Randolph Bryant, Judge Presiding:

Now comes Connecticut General Life Insurance Company, defendant in the above numbered and entitled cause, and shows to Your Honor that it desires an appeal from the decree entered against it in the above cause on December 27, 1935, as by record is manifest, and as a predicate for such appeal it has filed assignments of error specifying grounds of appeal, and the Connecticut General Life Insurance Company therefore prays that Your Honor allow its appeal to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, for the correction of the errors assigned and manifest of record, and that an order be entered fixing such bond conditioned as required by law as may be requisite in the premises; that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana,

under the rules of such court in such case made and provided.

Wherefore, the said Connecticut General Life Insurance Company respectfully prays that its appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, and your petitioner further prays that the proper order relating to the required security to be required of it be made, and that upon tender of a supersedeas appeal bond for appeal in proper form and in proper amount that the same be approved.

DUFF & CECIL,
ORGAIN, CARROLL & BELL,
Attorneys for the Defendant, Connecticut General Life Insurance Company.

MAJOR T. BELL,
Of Counsel.

ORDER ALLOWING APPEAL.

The foregoing application being duly presented with defendant's assignments of error, the appeal is allowed and it is ordered that the amount of the appeal bond for the superseding of the judgment pending the appeal and determination thereof, is hereby fixed at the sum of eight thousand ($8,000.00) dollars, said bond to be executed by at least two sureties if the sureties are individuals, and if the bond be executed by a corporate surety company authorized to do business in the State of Texas, then that one surety be sufficient.

It is further ordered that upon the execution and approval of said bond said appeal shall operate as a supersedeas of said judgment until the final judgment on appeal herein.

Dated this the 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
United States District Judge in and for the Eastern District of Texas, at Beaumont, Texas.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court, Eastern District of Texas. Plaintiff's Petition for Appeal and Order Allowing Appeal. Filed February 25, 1936. Helen Mathews, District Clerk U. S. Court, Eastern District of Texas. By Della Ashley, Deputy.

Assignments of Error, With Prayer for Reversal.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

VS.

Connecticut General Life Insurance Company.

ASSIGNMENTS OF ERROR.

Comes now the defendant, Connecticut General Life Insurance Company, in the above entitled and numbered cause, and files the following assignments of error in

connection with its petition for appeal, upon which assignments of error it will rely upon appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the final judgment rendered and entered herein on the 27th day of December, A. D. 1935:

1.

The policy upon which the plaintiff sued in this suit for total and permanent disability benefits being conditioned:

> "And no claim for permanent total disability incurred by an employee during his period of employment shall be paid after termination of such employment unless such employee gave written notice of such disability to the company (Connecticut General Life Insurance Company) during the said period of employment or within 60 days thereafter";

and the whole and undisputed evidence having shown that the plaintiff did not give notice in writing, or otherwise, to the defendant of this, or any other claim by him for total and permanent disability benefits under said policy within 60 days after the termination of his employment with the Gulf Refining Company (his employer), but instead, that the first notice given by the plaintiff of such a claim for total and permanent disability benefits to this defendant was more than six months after the termination of his employment with such company; and the whole and undisputed evidence having shown that the contract upon which the plain-

tiff sued was a contract made in Pennsylvania, triable and subject to the laws of Pennsylvania and to be interpreted thereunder, and that said provision for notice was valid under the laws of said State of Pennsylvania and would defeat a suit by the plaintiff if not complied with; and the defendant having moved for an instructed verdict at the conclusion of all the evidence, and before any argument or charge to the jury, based upon said ground, it was error for the Honorable Trial Court to refuse to sustain the defendant's motion for an instructed verdict, based upon the ground above set forth, and defendant excepted to the action of the court.

2.

The Honorable Trial Court having submitted the case to the jury for a general verdict, subject to the determination by the court thereafter of the question of whether or not plaintiff's suit should be tried and determined in accordance with the laws of Pennsylvania or the laws of Texas, and the defendant, upon the reservation of such question by the court, having made due request of the court for the following finding of fact upon said reserved question:

> "That group policy G5039R and plaintiff's insurance thereunder was and is a contract of the State of Pennsylvania and is subject to the interpretation of this court in accordance with the laws of the State of Pennsylvania";

and the whole and undisputed evidence having shown that group policy G5039R and plaintiff's insurance thereunder was a contract of the State of Pennsylvania and subject to the interpretation of the court under the laws of such state, and if so interpreted the plaintiff could not recover since he had failed to comply with the provision of said contract for notice of a claim within sixty days, which was valid under the laws of Pennsylvania, it was error for the court to refuse to make such finding of fact and to overrule this defendant's request for such finding.

3.

The Honorable Court having reserved and withheld the decision upon the question of whether or not group contract G5039R, and plaintiff's insurance thereunder, was subject to the laws of Pennsylvania and to be determined according to such, and immediately thereafter upon such reserved point, the defendant having requested the following declaration of law by the court:

> "That group policy G5039R and plaintiff's insurance thereunder being subject to interpretation in accordance with the laws of the State of Pennsylvania and the provision for notice within sixty days in said group policy G5039R being valid under the laws of the State of Pennsylvania, is enforcible in this proceeding, and plaintiff's failure to comply with such provision defeats a recovery by him in this cause."

The whole and undisputed evidence having shown such to be true, the contract involved being made in Pennsylvania, it was error for the court to overrule this defendant's request for such declaration of law, and refuse to make such declaration.

4.

The Honorable Trial Court, having submitted the case to the jury for its verdict, to be accepted subject to his later determination as to the question of whether or not group contract G5039R and plaintiff's insurance thereunder, was governed by the laws of the State of Pennsylvania, and the whole and undisputed evidence having shown that this was a contract made, entered into and subject to the laws of Pennsylvania and to be interpreted in accordance therewith; and the whole and undisputed evidence having shown that said policy contained a provision stating that no claim for total permanent disability thereunder, such as asserted by the plaintiff herein, by any employee as occurring during his period of employment should be paid after termination of such employment, unless such employee, plaintiff herein, gave written notice of such disability to the Connecticut General Life Insurance Company during the said period of employment with the Gulf Refining Company (his employer), or within sixty days thereafter; and the whole and undisputed evidence having shown that the plaintiff gave no such notice, but admitted that such notice was not given until more than six months after the termination of such employ-

ment, and the whole and undisputed evidence having shown that the failure to comply with the said provision for notice, under the laws of Pennsylvania, would defeat this suit, and this defendant having urged such defense, and all of said facts having been established by the whole and undisputed evidence, and after the verdict of the jury this defendant having filed motion for judgment *non obstante veredicto* based upon the ground that this suit was to be determined under the laws of the State of Pennsylvania and that the plaintiff had failed to comply with said provision in said contract for notice, which defeated his said suit, and said motion being true and established by the whole and undisputed evidence, the trial court committed error in overruling said motion of this defendant based on the ground above set forth, and entering judgment for the plaintiff and against this defendant.

5.

The Honorable Trial Court committed error in making and filing the following finding of fact, to which finding the defendant entered its exception:

> "That group policy G5039R, and the plaintiff's insurance thereunder, was and is a contract of the State of Texas and is subject to interpretation in this court in accordance with the laws of the State of Texas."

The whole and undisputed evidence having shown that plaintiff was suing upon group contract G5039R,

same was made, executed and delivered in Pennsylvania and specifically made subject to the laws of that state, it was error for the trial court to so find in face of the whole and undisputed evidence to the contrary.

6.

It was error for the Honorable Trial Court to make the following finding of fact:

> "However, the fact that such provision for notice was valid under the laws of the State of Pennsylvania does not defeat this claim and cause, since same is to be interpreted under and in accordance with the laws of the State of Texas."

The whole and undisputed evidence having shown that the contract sued upon by plaintiff was a Pennsylvania contract, it was error for the court to find to the contrary.

7.

The Honorable Trial Court committed error in overruling defendant's motion for a peremptory instruction presented at the conclusion of all the evidence and prior to any charge or argument to the jury as to attorneys' fees and penalties requested by the plaintiff, which motion was as follows:

> "This defendant requests the court, still relying upon its request for an instructed verdict, upon the principal amount involved in this cause, to-wit, four thousand ($4,000.00) dollars, as plaintiff's

insurance, that if such relief should be refused to this defendant that nevertheless, the jury should be instructed to return a verdict for this defendant and against the plaintiff as to attorneys' fees and penalties in this cause, because the undisputed evidence shows that the contract of insurance involved in this suit is a Pennsylvania contract, should be interpreted under the laws of such state, and that no attorneys' fees and penalties can be collected upon a contract of insurance under the laws of the State of Pennsylvania, where such contract is executed, nor can such be collected under the laws of the State of Texas when the contract was executed in the State of Pennsylvania."

Such facts being established by the whole and undisputed evidence and all rights of the plaintiff being subject to determination, according to the whole and undisputed evidence, by the laws of the State of Pennsylvania, it was error for the trial court to refuse to instruct the jury to return a verdict for the defendant as to all attorneys' fees and penalties requested, the laws of Pennsylvania allowing no attorneys' fees or penalties as requested by plaintiff.

8.

The Honorable Trial Court having withheld determination of the question of whether or not plaintiff's right to attorneys' fees and penalties in this case should be determined by the laws of the State of Pennsylvania

or the laws of the State of Texas, and submitted the case to the jury subject to such determination, and the defendant prior to such submission to the jury having requested the following declaration of law by the court;

> "That plaintiff's insurance under group policy G5039R, as well as policy G5039R, representing a Pennsylvania contract entered into in accordance with the laws of that state, and attorneys' fees and penalties not being allowed by the laws of the State of Pennsylvania, the plaintiff herein is not entitled to recover any attorneys' fees and penalties in this cause."

The whole and undisputed evidence having shown that this was a Pennsylvania contract and the rights derived therefrom to be determined by the laws of that state, the court committed error in refusing to make such declaration of law upon such point reserved.

9.

The Honorable Trial Court erred in rendering judgment for the plaintiff for attorneys' fees and penalties and rendering judgment against the defendant for such, and overruling the following ground of this defendant's motion for judgment *non obstante veredicto*:

> "That group policy G5039R, and plaintiff's insurance thereunder, was and is a Pennsylvania contract, and subject to the laws of that state, which laws should be applied to this controversy in this court and under the laws of such state attorneys'

fees and penalties are not permitted in a suit of this character in favor of the plaintiff or his attorneys to be collected from the defendant and therefore this defendant in any event is entitled to a judgment in its favor concerning the request for attorneys' fees and penalties."

The whole and undisputed evidence having shown that plaintiff's suit was founded upon a Pennsylvania contract and subject to the laws of that state and no attorneys' fees and penalties were allowed under the laws of Pennsylvania.

10.

The Honorable Trial Court committed error in making the following finding of fact upon the reserved point of whether or not attorneys' fees and penalties could be collected:

"However, attorneys' fees and penalties can be collected in this suit by the plaintiff, since it is to be interpreted and tried in accordance with the laws of the State of Texas."

The whole and undisputed evidence being that this was a Pennsylvania contract and subject to the laws of that state and determinable in accordance therewith.

11.

The Honorable Trial Court committed error in making the following declaration of law, to which the

defendant excepted, upon the reserved point of whether attorneys' fees and penalties could be collected:

> "That Article 4736 of the Revised Civil Statutes of Texas entitle the plaintiff to attorneys' fees and penalties in this suit and is applicable to this cause."

The whole and undisputed evidence having shown that the case should be tried in accordance with the laws of the State of Pennsylvania, the contract having been made in that state, the court committed error.

12.

The Honorable Trial Court committed error in overruling the following ground of defendant's motion for judgment, *non obstante veredicto*, as to attorneys' fees and penalties requested by the plaintiff:

> "Article 4736 of the Revised Civil Statutes of Texas allows only the holder of such policy of insurance to collect attorneys' fees and penalties and plaintiff herein is not the holder of such policy, but instead, said policy was held by the Gulf Oil Corporation of Pennsylvania, who is not a party to this suit, and, therefore, plaintiff is not entitled to recover same, but defendant is entitled to a judgment as to such."

This being a suit upon a policy of group insurance issued by the defendant to the Gulf Oil Corporation of Pennsylvania, and the Gulf Oil Corporation of Pennsylvania being the named assured and plain-

tiff herein being insured thereunder only in accordance with the terms and provisions of group contract G5039R, in which the named assured was the Gulf Oil Corporation of Pennsylvania, the whole and undisputed evidence having established such, the court committed error, to which action of the court this defendant excepted.

13.

The Honorable Trial Court committed error in overruling and refusing to sustain this defendant's motion for judgment, *non obstante veredicto*, as to attorneys' fees and penalties based upon the following ground:

> "Because Article 4736 of the Revised Civil Statutes of Texas applied only to life, health and accident insurance and this is not a suit pertaining to life, health and accident insurance, but instead, is a suit pertaining to group insurance, and furthermore, is a suit pertaining to disability insurance and not life, health and accident insurance."

Such being established by the whole and undisputed evidence, the court committed error in overruling such ground and entering judgment in favor of the plaintiff and against this defendant for attorneys' fees and penalties, to which action of the court this defendant excepted.

14.

The verdict of the jury in favor of the plaintiff was against the whole and uncontroverted testimony,

which whole and uncontroverted testimony established that group contract G5039R and plaintiff's rights thereunder were controlled by the laws of Pennsylvania, and that such contract contained a provision requiring notice of a claim to this defendant by the plaintiff within sixty days after termination of his employment, which provision was not complied with by the plaintiff and which provision was valid under the laws of Pennsylvania, and error was committed by the trial court in accepting said verdict and rendering judgment thereon.

15.

The Honorable Trial Court committed error in rendering judgment for the plaintiff as the whole and undisputed evidence showed that plaintiff's rights under such contract involved was triable and to be determined by the laws of Pennsylvania, and that the plaintiff had violated a valid provision of said contract requiring notice of his claim within sixty days of the termination of his employment and, therefore, was not entitled to recover.

16.

The Honorable Trial Court committed error in rendering judgment for the plaintiff for attorneys' fees and penalties, since the whole and undisputed evidence showed that the contract involved was a Pennsylvania contract and to be determined in accordance with the laws of that state, and that the laws of that state did not permit attorneys' fees and penalties.

17.

The Honorable Trial Court committed error in making a finding in the judgment rendered on November 26, 1935, to the effect "policy G5039R, upon which the plaintiff's suit was predicated, was applied for and performed in Texas and the final acts necessary to make the policy effective were performed in Texas, and that policy G5039R and certificate R23558, issued him thereunder, is a Texas contract;" because the whole and undisputed evidence showed that the contract was applied for and became effective in the State of Pennsylvania and was not a Texas contract.

Wherefore, the appellant prays that said decree be reversed and that the Honorable Circuit Court render judgment for the defendant in said matter for all amounts sought by the plaintiff, both the principal amount and attorneys' fees and penalties; or in the alternative, that said judgment be reversed and the United States District Court for the Eastern District of Texas, sitting at Beaumont, be directed to enter judgment in favor of the defendant for all amounts sought by the plaintiff, both the principal amount and attorneys' fees and penalties, or in the alternative, that the court be directed to enter judgment for the defendant for the attorneys' fees and penalties; further, in the alternative, if the court is not directed to enter judgment for the defendant, then the court be directed to dismiss plaintiff's suit as to all amounts, or in the alternative, as to attorneys' fees and penalties; and

that all costs be taxed against the appellee, John Boseman.

Respectfully submitted,

DUFF & CECIL,
ORGAIN, CARROLL & BELL,
Attorneys for Appellant, Connecticut General Life Insurance Company.

MAJOR T. BELL,
Of Counsel.

Presented this 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court for the Eastern District of Texas. Assignments of Error. Filed February 25, 1936. Helen Mathews, U. S. District Clerk, Eastern District of Texas. By Della Ashley, Deputy.

Supersedeas Bond.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

VS.

Connecticut General Life Insurance Company.

SUPERSEDEAS BOND.

Know All Men by These Presents:

That Connecticut General Life Insurance Company, a corporation, as principal, and the undersigned, an

incorporated surety company with a permit to do business in the State of Texas, as surety, are held and firmly bound unto John Boseman in the full and just sum of eight thousand ($8,000.00) dollars, to be paid to the said John Boseman, his executors, administrators, successors and assigns; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, administrators, successors and assigns.

By these presents, signed and sealed with our seals this the 20th day of February, A. D. 1936.

Whereas, lately at a term of the United States District Court in the suit pending in said court between John Boseman, plaintiff, vs. Connecticut General Life Insurance Company, defendant, cause At Law 1468, on the docket of said court, a final judgment was rendered in favor of the plaintiff and against the defendant in the sum of five thousand four hundred eighty ($5,480.00) dollars, and said judgment was entered on December 27, 1935, and four thousand ($4,000.00) dollars of said judgment drawing interest at the rate of six per cent (6%) per annum from April 1, 1934, until the date of said judgment; and thereafter, the entire amount of said judgment drawing interest at the rate of six per cent (6%) per annum from the date of entry thereof; and,

Whereas, the defendant, Connecticut General Life Insurance Company, has obtained allowance of an appeal to reverse said judgment in the aforesaid suit dated and entered as aforesaid;

Now, therefore, the condition of the above obligation is such that if the above named Connecticut General Life Insurance Company shall prosecute its appeal to effect and pay off and discharge said judgment with interest and answer all damages and costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, we have signed and sealed this instrument this the 20th day of February, A. D. 1936.

Connecticut General Life Insurance Company,
By John M. Laird,
Its Vice-President,
(Seal) Principal.

Hartford Accident & Indemnity Company,
By E. H. Cheney,
Its Attorney in Fact,
(Seal) Surety.

The above and foregoing bond being this day presented to me is approved and ordered filed, this the 25th day of February, A. D. 1936, as a supersedeas.

RANDOLPH BRYANT,
Judge Presiding.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. In the United States District Court, Eastern District of Texas.

Supersedeas Bond. Filed February 25, 1936. Helen Mathews, Clerk United States District Court, Eastern District of Texas. By Della Ashley, Deputy.

Citation on Appeal.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

CITATION ON APPEAL.

The United States of America:

To John Boseman, Plaintiff in the Above Cause, or His Attorneys of Record, Greetings:

You are hereby notified that in the above cause, wherein Connecticut General Life Insurance Company is defendant and John Boseman is plaintiff, At Law No. 1468, on the docket of the United States District Court in and for the Eastern District of Texas, at Beaumont, an appeal has been allowed the defendant, Connecticut General Life Insurance Company, therein to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

You are hereby cited and admonished to be and appear at said court at New Orleans, Louisiana, thirty (30) days after date of this citation to show cause, if any there be, why the order and decree appealed from

should not be corrected and speedy justice done to parties in that behalf.

Witness the Honorable Randolph Bryant, Judge Presiding, in the United States District Court in and for the Eastern District of Texas, Beaumont Division, at Beaumont, in said cause this the 25th day of February, A. D. 1936.

RANDOLPH BRYANT,
Judge Presiding, United States District Court in and for the Eastern District of Texas, at Beaumont.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court, Eastern District of Texas. Citation on Appeal. Filed February 27, 1936. Helen Mathews, District Clerk, United States District Court. By Della Ashley, Deputy.

Waiver of Service of Citation.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

VS.

Connecticut General Life Insurance Company.

WAIVER OF SERVICE.

Now comes John Boseman, appellee in the above cause, by his attorneys of record, and acknowledges receipt of citation on appeal in the above cause and

hereby accepts service thereof, and enter their appearance in said cause to the next regular term of the Honorable United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, and waive all further service and notice of said appeal.

HOWELL & HOWELL,
Attorneys for Appellee,
John Boseman.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court, Eastern District of Texas. Waiver of Service of Citation on Appeal. Filed February 27, 1936. Helen Mathews, U. S. District Clerk, Eastern District of Texas. By Della Ashley, Deputy.

Praecipe.

In the United States District Court in and for the Eastern District of Texas, Beaumont Division.

At Law No. 1468.

John Boseman,

vs.

Connecticut General Life Insurance Company.

PRAECIPE FOR TRANSCRIPT.

To the Honorable Helen Mathews, Clerk of the District Court of the United States for the Eastern District of Texas:

Now comes Connecticut General Life Insurance Company, appellant in the above cause, and prepares

and files this its praecipe indicating the portion of the record it desires to be incorporated into the transcript in the appeal herein allowed, as follows:

1. Caption.

2. Original Petition of Plaintiff.

3. Petition for Removal by Connecticut General Life Insurance Company.

4. Notice of Intention to Remove and Service Thereof.

5. Removal Bond and Approval Thereof.

6. Order of Removal.

7. Plaintiff's Trial Amendment to Original Petition.

8. Defendant's Second Amended Original Answer.

9. Verdict of the Jury.

9-A. Additional Caption.

10. Findings of Fact and Declarations of Law.

11. Order Granting Plaintiff's Motion for Judgment.

12. Order Overruling Defendant's Motion for Judgment.

13. Judgment.

14. Bill of Exceptions.

15. Order of November 13, 1935, Keeping Open Term of Court.

16. Order of December 26, 1935, Continuing Open Term of Court for This Case Until March 2, 1936.

17. Petition for Appeal and Order Allowing Same.

18. Assignments of Error, With Prayer for Reversal.

19. Supersedeas Bond.

20. Citation on Appeal.

21. Waiver of Service of Citation on Appeal.

22. Praecipe.

23. Clerk's Certificate.

DUFF & CECIL,
ORGAIN, CARROLL & BELL,
Attorneys for Defendant, Connecticut General Life Insurance Company.

MAJOR T. BELL,
Of Counsel.

The within praecipe has been submitted to the attorneys for John Boseman, plaintiff, who are Messrs. Howell & Howell. They have examined said praecipe and they hereby agree that a record of the instruments and proceedings as above set forth shall constitute the record on appeal to the United States Circuit Court for the Fifth Circuit, and indicate they do not desire any further instruments included in the record; and do hereby waive service of praecipe.

HOWELL & HOWELL,
Attorneys for Plaintiff, John Boseman.

Endorsed:

At Law 1468. John Boseman vs. Connecticut General Life Insurance Company. United States District Court, Eastern District of Texas. Praecipe for Transcript. Filed February 28, 1936. Helen Mathews, District Clerk United States District Court. By Della Ashley, Deputy.

Clerk's Certificate.

I, Helen Mathews, Clerk of the District Court of the United States for the Eastern District of Texas, at Beaumont, in the Fifth Circuit, and district aforesaid, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, assignments of error and all the proceedings had in Cause No. 1468 at Law, wherein John Boseman is plaintiff and Connecticut General Life Insurance Company is defendant, prepared in accordance with the praecipe for transcript as fully as the same remain on file and of record in my office at Beaumont; and that same constitutes the return of the original citation on appeal and waiver of service thereof, annexed hereto.

Witness my hand officially and the seal of said court at Beaumont, in said district, this the 12th day of March, A. D. 1936.

Helen Mathews,
Clerk.

(Seal)

By Ruth B. Head,
Chief Deputy.

[fol. 234] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of June 2nd, 1936

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

versus

JOHN BOSEMAN

On this day this cause was called, and, after argument by Major T. Bell, Esq., for appellant, and Leon P. Howell, Esq., for appellee, was submitted to the Court.

[fol. 235] OPINION OF THE COURT—Filed July 14th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellant,

versus

JOHN BOSEMAN, Appellee

Appeal from the District Court of the United States for the Eastern District of Texas

(July 14, 1936)

Before Foster, Sibley and Hutcheson, Circuit Judges

SIBLEY, Circuit Judge:

The sole question presented by this appeal is whether the contract of insurance against total and permanent disability on which John Boseman recovered is governed by

the law of Texas. The trial court so held, awarding judgment for attorney's fees and damages as fixed by a Texas statute, and denying validity to a provision of the insurance contract that no claim would be paid after termination of Boseman's employment unless written notice were [fol. 236] given of it within sixty days after the employment ceased. The court found, and it is conceded, that the provision about notice is valid under the law of Pennsylvania which the insurer contends is controlling, and that no attorney's fees or damages would be recoverable under that law. We put aside the question about statutory damages and attorney's fees, because that about notice will control the case.

The contract is one of group insurance for employes. The insurer is a corporation of Connecticut, with its home office at Hartford. It had during the time here involved a permit to do business in Texas, but had never qualified by making the required deposits, had no office or agents in Texas, and had written no insurance there of any kind since 1917. The employer who negotiated for the insurance is Gulf Oil Corporation of Pennsylvania, having its home office at Pittsburgh. Boseman was an employe of Gulf Refining Company which is an affiliate or subsidiary of Gulf Oil Corporation and which was carrying on business at Port Arthur, Texas. Prior to 1932, Gulf Oil Corporation, for its employes and those of its subsidiaries and affiliates, had arranged group insurance with this same insurer under contracts known as Policies G5039 and G5545, and Boseman was insured under the latter. On March 15th, 1932, at Pittsburgh, Gulf Oil Corporation in behalf of itself, its subsidiaries and affiliate companies, by a writing there delivered to an agent of the insurer requested that Policies G5039 and G5545 be cancelled as of March 31, 1932, and that a new Policy G5039R be issued in Pittsburgh and to be governed by the laws of Pennsylvania, under which employes shall be insured who have complied with its terms. Under date of March 7th, 1932, Boseman had at Port Arthur signed and delivered to an officer of Gulf Refining Company an application for insurance under the new policy to be effective April 1st, agreeing to be bound by the rules governing it, and authorizing the de- [fol. 237] duction from his pay each month of the proper amount in advance for premium and agreeing to take the

new insurance in lieu of the old. This paper was not sent to the insurer, but remained in the employer's files. The new policy was issued under date of April 1st, 1932, and delivered at Pittsburgh to Gulf Oil Corporation. Reciting that it is issued in accordance with the application and cancels and substitutes the former policies, it states that "Connecticut General Life Insurance Company, Hartford, Connecticut, (hereinafter called the Company), specifies in this policy the terms and conditions under which it insures certain employes of Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies (hereinafter called the employer)." The policy proceeds to define the risks covered and the employes who are eligible for insurance and includes those who on March 31, 1932, were insured under the former Policy G5545 and hence included Boseman. Other employes are required to have completed a stated period of service. "An employe may elect insurance under this policy by completing any form of payroll deduction order approved by the employer. Each employe electing the insurance before becoming eligible will be insured automatically on the day he becomes eligible." In some stated cases evidence of insurability satisfactory to the company is required, but Boseman was not included in them. The period of the policy and the premium requirements are: "This policy is issued for a term of one year from April 1st, 1932, 12:01 A. M. Standard Time at the employer's address, in consideration of the application of the employer, the payment of the binding premium of $1.00, and the payment of such further premiums as are provided herein." "On the effective date of this policy and on each annual policy renewal date thereafter an average annual premium rate will be established" in a stated way. "Premiums are due and payable monthly [fol. 238] in advance at the home office of the Company", determined as above. "If any premium is not paid when due this policy shall cease except that 31 days of grace will be allowed without interest for the payment of all premiums other than the binding premium." The employer at the beginning of each month is to notify the Company of new employes taking insurance and of those whose insurance has terminated, and premium adjustments are to be made accordingly. "Upon termination of employment of any insured employe his insurance shall be can-

celled as follows except as hereinafter provided: 1. Employes who upon termination of employment request a refund of the unearned premium shall have insurance cancelled upon termination of employment." Boseman's employment ceased Oct. 8, 1932, and he received a proportionate refund for that month. "The policy and the application of the employer, copy of which is attached to and made a part of this policy, and the applications of the employes, if any, shall constitute the contract between the parties." "This contract is issued and delivered in the City of Pittsburgh in the Commonwealth of Pennsylvania, and is governed by the laws of that Commonwealth." Other details of the insurance are omitted as not here material. The policy, however, contains this: "The Company will issue to the employer for each insured employe an individual certificate. The certificate will in no way void any of the terms and conditions outlined in the policy, but will show the insurance protection to which the employe is entitled, to whom payable, and the conversion privilege." The Gulf Refining Company notified Gulf Oil Corporation of Boseman's application for insurance and Gulf Oil Corporation notified the insurer, and about May 1st the insurer issued a certificate effective April 1st which states that it is issued pursuant to the above quoted provision of the policy and certifies that the insurer "has is- [fol. 239] sued a policy of cooperative group life insurance to Gulf Oil Corporation and/or subsidiary or affiliated companies, executed and delivered in the Commonwealth of Pennsylvania, and that subject to its terms and conditions John Boseman, an employe, is insured for $4,000." Many but not all of the terms and conditions of the policy are annexed to the certificate and among them this: "No claim for permanent disability incurred by any employe during employment shall be paid after the termination of such employment unless the employe gave written notice of disability to the Company during the period of employment or within sixty days thereafter." This certificate was delivered to Gulf Oil Corporation in Pittsburgh and was sent by it to Port Arthur to Boseman. Boseman lived and worked at Port Arthur and the deductions from his pay were made there. Neither Boseman nor any other employe had any direct communication with the insurer previous to making claim, but only with the

employer. Both the officers of the employer and of the insurer testified that the former were not in any manner authorized nor did they attempt to act for the insurer, but acted for and in behalf of the employees touching the insurance. The Gulf Oil Corporation paid the insurer the required premiums at Pittsburgh or Hartford, and reimbursed itself in part only by the pay deductions of the employes.

Group insurance is of recent origin. It is usually cheaper than individual insurance probably because the risks are in a measure self-selecting and because the expense to the insurer of writing it and administering it is slight. That taken by employers for employes usually has a feature of benevolence or paternalism, sometimes being paid for entirely by the employer, sometimes in part as in this case. There are four parties interested in the contract: The insurer, the employer, the employe and his beneficiary. The [fol. 240] certificate issued in this case to the insured employe is clearly not the contract of insurance for it says so on its face. The Commission of Appeals of Texas so held of a similar one in Wann vs. Mutual Life Ins. Co., 41 S. W. (2) 50. We looked to a certificate, however, to aid a construction of the policy in Metropolitan Life Ins. Co. vs. Foster, 67 Fed. (2) 264. Since the certificate is not the contract nor at all necessary to the existence of the insurance, (All-State Life Ins. Co. vs. Tillman, 226 Ala. 245, 146 So. 39), the time and place of its delivery are unimportant to the present inquiry. The insurance as to any employe is perfect so soon as eligibility and his election concur, the policy being in force. Notice to the insurer is not a prerequisite, though it is to be given in due course. Boseman was eligible from the beginning, and elected to take the insurance before the policy was issued by signing in advance the necessary pay deduction order to his employer. His insurance waited only on the issuance of the policy and became effective instantly after and because of that act. The insurer did not authorize the employer or its agents to solicit Boseman in Texas to become insured. According to the evidence the employer initiated the whole matter, obtaining from Boseman and doubtless from many other employes authority to proceed, and thereafter obtained the insurance on its own and their behalf. Even as to employes who did not consent in advance the reasonable

conclusion is that the employer's action was taken for them in anticipation of their ratification, which occurred on their signing a pay deduction order. Employes' group insurance partly or wholly paid for by the employer resembles to some extent insurance by a mutual benefit association, which is obtained by joining the association. Although the insurance of the particular new member arises only on his becoming such, his insurance is usually governed not by the law of the place where he lives and receives his certificate but of that under which the association operates. [fol. 241] The federal courts have been inclined to treat such insurance not as diverse contracts under the particular laws of the several States where members reside but as under the laws of the home State and thus uniform. Royal Arcanum vs. Green, 237 U. S. 532; Modern Woodmen of America vs. Mixer, 267 U. S. 544; Minnesota Commercial Men's Association vs. Benn, 261 U. S. 140. Many courts hold that employes' group insurance whether the employer pays all or only a part of the premium cost is a contract between the insurer and the employer for the benefit of the employes and their named beneficiaries, and that the latter sue the insurer only as third persons for whose benefit the contract was made. This view is emphasized by the right of the employer to cancel the insurance and release the insurer, or by this result occurring from the employer's failure to pay the agreed aggregate premium. See Carpenter vs. Chicago, 21 Ind. App. 88; Gallagher vs. Simmons Hardware Co., 258 S. W. 16; Duval vs. Metropolitan Life Ins. Co., 82 N. H. 543; 50 A. L. R. 1276; Leach vs. Metropolitan Life Ins. Co., 124 Kansas 584, 261 P. 603; State of New York vs. Amringe, 266 N. Y. 277, 194 N. E. 754; Connecticut General Life Ins. Co. vs. Speer, (Ark.), 48 S. W. (2) 553; Equitable Life Ins. Co. vs. Hall, (Ky.), 69 S. W. (2) 977; Kingsland vs. Missouri State Life Ins. Co., (Mo.), 66 S. W. (2) 959; Davis vs. Metropolitan Life Ins. Co., (Tenn.), 32 S. W. (2d) 1034; Thompson vs. Pacific Mills, 141 S. C. 303, 55 A. L. R. 1237. Several of the cases cited strongly assert that the employer is not to be regarded as the agent of the insurer soliciting insurance in the employe's State, but as the representative of the employe in making and maintaining the insurance. We are persuaded that this is the true view, although a different conclusion is maintained by a Texas Court of Civil Appeals

in Connecticut General Life Ins. Co. vs. Lockwood, 84 S. W. (2d) 245, and Connecticut General Life Ins. Co. vs. Dent, 84 S. W. (2d) 250. There may arise cases in which [fol. 242] group insurance is made a cover by an insurance company for soliciting business in a State in which it is not qualified to do business, but this not such. In Palmetto Fire Ins. Co. vs. Conn., 272 U. S. 295, 9 Fed. (2d) 203, and in Chrysler Sales Corporation vs. Smith, 9 Fed. (2d) 266; Chrysler Sales Corporation vs. Spencer, 9 Fed. (2d) 674; there was no true group insurance but a wholesale plan to insure automobiles sold at retail—each insurance was distinct with its own policy and for its own premium paid in the purchase price by the buyer of the car. Whether we look at the case before us in its general aspect or at the special circumstances under which Boseman became insured we are of opinion that the transaction of insurance occurred in Pennsylvania and not in Texas. If employes in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania, and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do not control it. Algeyer vs. State of Louisiana, 165 U. S. 578; New York vs. Amringe, 266 N. Y. 277, 194 N. E. 754; Hartford Accident & Indemnity Co. vs. Delta and Pine Land Co., 292 U. S. 143.

The conclusion that the laws of Pennsylvania ought to control is much strengthened by the express agreement to that effect of all parties both in the application for the policy, in the policy itself, and in the certificate accepted by Boseman. Parties in contracting may adopt as part of their contract the laws of a State other than their own if not contrary to the law or public policy of the State where the contract is made and to be performed. Mutual Life Ins. Co. vs. Hill, 193 U. S. 551. Let it be remembered that this policy was applied for, the first premium was paid, and the policy was delivered in Pennsylvania, and that ordinarily fixes the place where an insurance contract is considered to be made. Mutual Life Ins. Co. vs. Hill, supra. The term of the policy runs from April 1st to April 1st, irrespective of when any employe may come in under it. [fol. 243] The $1.00 binding premium and the agreed average premium must be paid by the employer in full to initiate and to sustain the policy irrespective of whether any

or all employes have paid their contribution to the employer. The insurer did not go out of Pittsburgh to make this arrangement, and all notices or payments necessary to carry it on are done there. The employe transacts nothing with his insurer in Texas in making and sustaining his insurance, but all his transactions are with the employer and through him with the insurer in Pittsburgh. The business is substantially done in Pittsburgh and the parties may without imputation of evading the law of any other State agree that they are dealing uniformly under the law of Pennsylvania. Boseman in applying to his employer for participation in the policy and by accepting his certificate expressly agreed to the provision requiring notice of claim and it is a material part of the insurance contract. The law of Pennsylvania sustains it, while the law of Texas, as the parties concede, makes a notice period of less than ninety days unreasonable and void.* The law which will sustain rather than that which will defeat a plain and fair agreement ought where possible to be applied. Boseman did not give notice of claim even within the ninety days mentioned in the Texas statute, but more than six months after his employment ceased and after he received the rebate of premium which marked the cessation of his insurance. He is not entitled in the face of his contract and of the law under which he agreed that it was being [fol. 244] made to assert such claim. The judgment is reversed, and the case remanded for further proceedings not inconsistent herewith.

Judgment Reversed.

---

* See Art. 5546, Texas Revised Statutes of 1925, which does not mention insurance but is held applicable to it in Grand Lodge vs. Hill, 277 S. W. 797; Southern Travelers Ins. Assn. vs. Cole, 45 S. W. (2d) 675; Southern Travelers Assn. vs. Masterson, 48 S. W. (2) 771.

[fol. 245] JUDGMENT

Extract from the Minutes of July 14th, 1936

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

versus

JOHN BOSEMAN

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellee, John Boseman, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 254] ORDER DENYING REHEARING

Extract from the Minutes of August 27th, 1936

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY

versus

JOHN BOSEMAN

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 255] MOTION AND ORDER STAYING MANDATE—Filed September 8th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT, AT NEW ORLEANS

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellant,

versus

JOHN BOSEMAN, Appellee

Appealed from the District Court of the United States for the Eastern District of Texas, Beaumont Division

APPLICATION FOR STAY OF MANDATE

To the Honorable Justices Sibley, Hutcheson and Foster of the United States Circuit Court of Appeals, Fifth Circuit:

Now comes John Boseman, appellee in the above styled and numbered cause, and respectfully requests the court to grant a stay of the decree of this Honorable Court entered on the 14th day of July, 1936, and to withhold the issuance of its mandate pending the filing of and action on petition for certiorari to the Supreme Court of the United States in this cause.

[fol. 256] The question involved on this appeal to this Honorable Court is whether the Texas or Pennsylvania laws were applicable and govern a certain contract of insurance covering appellee.. Upon a trial of the cause in the United States District Court for the Eastern District of Texas, the trial court held that the Texas laws were applicable, and on the appeal from said judgment this Honorable Court entered its decree reversing the trial court, holding that the laws of Pennsylvania govern the contract and ordering the trial court to enter judgment not inconsistent with the opinion of this court, and thereafter this Honorable Court on the 27th day of August, 1936, overruled appellee's motion for rehearing of said cause.

It is the intention of appellee to petition the Supreme Court of the United States for certiorari upon the grounds that this Honorable Court has erroneously decided the law applicable to the case and that such opinion is in conflict with a former decision by the Supreme Court of the United States rendered in the case of Palmetto Fire Insurance Company vs. Conn, 71 L. D. 243, and the decision of the Circuit Court of Appeals in the same case.

Therefore, an order of stay of the decree of this Honorable Court and the withholding of the issuance of the mandate should be granted in order that this question may be properly presented to and determined by the Supreme Court of the United States.

Wherefore, premises considered, appellee, John Boseman, respectfully prays that this Honorable Court enter its order withholding the issuance of the mandate and staying its decree rendered in this cause until disposition of the petition for writ of certiorari and, if the petition is granted, until the case is decided.

[fol. 257] (Signed) Leon P. Howell, Attorney for Appellee.

A copy of this application received this the 1st day of September, A. D. 1936, and further service thereof is hereby waived.

(Signed) Major T. Bell, Attorney for Appellant.

[fol. 258] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8077

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellant,

versus

JOHN BOSEMAN, Appellee

On Consideration of the Application of the Appellee in the above numbered and entitled cause for stay of the mandate of this court therein, to enable Appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at Atlanta, Ga., this 4 day of September, 1936.

(Signed) Sam'l H. Sibley, United States Circuit Judge.

[fol. 259] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 234 to 258 next preceding this certificate contain full, true and complete copies of all the

pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8077, wherein Connecticut General Life Insurance Company is appellant and John Boseman is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 233 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 28th day of October, A. D., 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 21, 1936

The petition herein for a writ of cretiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

NOV 16

CHARLES ELMORE

No. 531

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

JOHN BOSEMAN, *Petitioner*
(Appellee below)

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Respondent
(Appellant below)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

STERLING D. BENNETT,
Counsel for Petitioner.

LEON P. HOWELL,
Of Counsel.

SUBJECT INDEX

	Pages
PETITION FOR WRIT OF CERTIORARI	1-6
Summary Statement of the Matter Involved	1-3
Reasons Relied on for the Allowance of the Writ	3-6
Prayer for Writ	6-7
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	8-24
Opinion of the Court Below	8
Jurisdiction	8-9
Statement of the Case	9-13
Specification of Errors	13-14
Argument	14-24
CONCLUSION	24
APPENDIX	25-26

TABLE OF CASES CITED

Bradford Electric Light Co. v. Clapper, 284 U. S. 221, 52 S. Ct. 118, 76 L. Ed. 254	9
Camden Fire Ins. Co. v. Wandell, 195 S. W. 289	21
Carruth v. Aetna Life Ins. Co., 122 S. E. 228	16
Chrysler Sales Corp. v. Smith, 9 Fed. (2d) 666	3, 16, 17, 18, 22, 24
Chrysler Sales Corp. v. Spencer, 9 Fed. (2d) 674	3
Connecticut General Life Insurance Company v. Dent, 84 S. W. (2d) 250	16, 18, 19, 21
Connecticut General Life Insurance Company v. Lockwood, 84 S. W. (2d) 245	16, 18, 19, 21
Connecticut General Life Insurance Company v. Moore, 75 S. W. (2d) 329	15, 18, 20
Forsyth v. City of Hammond, 166 U. S. 506, 17 S. Ct. 665, 41 L. Ed. 1095	9
Illinois Bankers Life Association v. Tailey, 68 Fed. (2d) 4	23
Lamborn v. National Bank of Commerce of Norfolk, Va., 276 U. S. 469, 48 S. Ct. 378, 72 L. Ed. 657	9
Lumbermen's Ins. Co. v. Meyer, 179 U. S. 407, 25 S. Ct. 483, 49 L. Ed. 810	23
Metropolitan Life Ins. Co. v. Brownell, 68 Fed. (2d) 481	23
Metropolitan Life Ins. Co. v. Wann, 81 S. W. (2d) 298	16, 18
Metropolitan Life Ins. Co. v. Worton, 70 S. W. (2d) 216	16, 18, 21
Mutual Life Ins. Co. v. Johnson, 55 S. Ct. 154	23
Palmetto Fire Ins. Co. v. Conn, 9 Fed. (2d) 203	3
Palmetto Fire Ins. Co. v. Conn, 272 U. S. 295, 47 S. Ct. 88	3, 21
Pool v. Perkins, 101 S. E. 240	23
Southern Ins. Co. of New Orleans v. Wolverton Hardware Co., 19 S. W. 615	21

INDEX OF STATUTES

Act of Congress, as Amended February 13, 1925, Ch. 229, Sec. 43, S. at L. 938, U. S. C. Title 28, Sec. 347	9
Article 4736 Revised Civil Statutes of Texas	2, 9, 25
Article 5054 Revised Civil Statutes of Texas	14, 21, 24, 25
Article 5056 Revised Civil Statutes of Texas	13, 14, 19, 20, 21, 22, 24, 25
Article 5546 Revised Civil Statutes of Texas	26

No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

JOHN BOSEMAN, *Petitioner*
(Appellee below)

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Respondent
(Appellant below)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE CHAS. EVANS HUGHES, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Summary Statement of the Matter Involved

Your Petitioner respectfully shows:

This is an action at law, tried in the United States District Court in and for the Eastern District of Texas, wherein Petitioner sought from Respondent the total and permanent disability benefits under Group Policy G5039-R issued by the

Connecticut General Life Insurance Company on April 1, 1932, to certain employees of the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies. In addition to the principal amount of disability benefits the plaintiff recovered One Thousand ($1,000.00) Dollars attorney's fees and twelve (12%) per cent penalty, as provided for in Article 4736 of the Revised Civil Statutes of Texas (said Article hereinafter set out in full).

Petitioner, John Boseman, was an employee of the Gulf Refining Company, a Texas corporation, at Port Arthur, Texas, from July 24, 1916, to October 8, 1932 (R. p. 101).

The master policy provides that no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gives written notice of such disability to the insurance company during the period of employment or within sixty days thereafter (R. pp. 32-33). This is the provision of the policy controlling Petitioner's right to recover. It was admitted that Petitioner did not give notice of his permanent total disability within sixty days after the termination of his employment. It is conceded by the parties: that such provision under the law of Pennsylvania was valid, while the law of Texas makes a notice provision of less than ninety days unreasonable and void (Article 5546 R. C. S. of Texas). (R. p. 243.)

On December 26, 1935, the trial court entered its judgment holding that the final acts necessary to consummate the contract and give it life were performed in Texas, and that such policy was governed by the laws of the State of Texas (R. p. 47), from which appeal was perfected to the Fifth Circuit Court of Appeals, which court reversed the case, holding that every act necessary to consummate the contract of insurance was performed within the Commonwealth of Pennsylvania and should be interpreted under the laws of that Common-

wealth, by an opinion of that court dated July 14, 1936 (R. p. 235). On August 4, 1936, Petitioner filed a petition for rehearing, challenging such conclusion and denying the applicability to the case at bar of the general proposition enunciated by the authorities on which the opinion purported to rely. This was overruled by order dated August 27, 1936.

Reasons Relied on for the Allowance of the Writ

The decision rendered by the Honorable Fifth Circuit Court of Appeals disposes of an important question of general law in a way probably untenable or in conflict with the weight of authorities, in that it construes the contract sued upon to be a Pennsylvania contract, giving an interpretation to the contract beyond the obvious intent of the parties thereto and reversing the meaning heretofore accepted with seeming uniformity by both Federal and State courts.

The decision rendered by the Fifth Circuit Court of Appeals in this case has decided an important question of local law in a way probably in conflict with applicable local decisions, in that it construes Texas statutes, to support the basis of its judgment, in a manner that broadens the meaning of the statutes beyond the obvious legislative intent, and reverses the meaning heretofore accepted with seeming uniformity by Texas courts.

The decision rendered by the Fifth Circuit Court of Appeals in this case is in conflict with the decisions of another Circuit Court of Appeals and the Supreme Court of the United States, on the same matter, to-wit: CHRYSLER SALES CORPORATION v. SMITH, 9 Fed. (2d) 666; PALMETTO FIRE INSURANCE COMPANY v. CONN, 9 Fed. (2d) 203; CHRYSLER SALES CORPORATION v. SPENCER, 9 Fed. (2d) 674; which cases were decided by statutory three-judge Federal courts, and affirmed by this Honorable Court in PALMETTO FIRE INSURANCE COMPANY v. CONN, 272 U. S. 295, 47 S. Ct. 88.

Chrysler Sales Corporation v. Smith, supra; Palmetto Fire Insurance Company v. Conn, supra, and Chrysler Sales Corporation v. Spencer, supra:

FACTS

Effective date of insurance was postponed until the car was sold at retail and title passed.

DECISION OF THE COURT

"The contract involved was not insurance in praesenti but a contract to insure in the future."

FACTS

The contract was not intended to indemnify Chrysler nor its distributors.

The distributor in Wisconsin, acting for the insurance company, performed these acts:

(1) He sells the car, including the insurance.

(2) He collects the price, including the premium. (That he does not remit it is of small account, having already advanced it, receiving nothing for it.)

(3) He fixes the term of the insurance.

(4) He selects the beneficiary (purchaser).

Boseman case:

FACTS

Effective date of insurance was postponed until the employee became eligible and elected to become insured (R. pp. 67-87).

DECISION OF THE COURT

"Boseman's insurance waited only on the issuance of the Master Policy and became effective instantly after and because of that act" (R. p. 240).

FACTS

The master policy G5039-R was not intended to indemnify the Gulf Oil Corporation of Pennsylvania nor its subsidiary and/or affiliated companies.

The Gulf Refining Company, acting for the insurance company, performed the following acts in Texas:

(1) Secured a release from any and all claims and liabilities under Policy G-5545 (R. p. 99).

(2) Secured an application for insurance under Contract G5039-R (R. p. 99).

(3) Required Boseman to execute a pay roll deduction

(5) He notifies Chrysler Sales Corporation of those details by mail.

The master contract provided that the insurer shall issue certificates to purchasers substantially in the form attached.

All premiums were paid on the master contract by the Chrysler Sales Corporation to the insurance company at Baltimore, Md.

order to the employer for the purpose of collecting the individual empolyee's premiums on Policy G5039-R (R. pp. 73-79).

(4) Collected John Boseman's premiums on Policy G5039-R in Texas (R. p. 99).

(5) Notified the Gulf Oil Corporation of Pennsylvania of these details by mail.

(6) Delivered Boseman a certificate under master policy G5039-R in Texas (R. pp. 90-91).

(7) Fixed the term of insurance (having the right to discharge the employee, thereby terminating the insurance) (R. p. 81).

(8) Selected the beneficiary (employee) (R. pp. 67-69).

The Gulf Oil Corporation of Pennsylvania paid the insurer the required premiums at Pittsburgh, Pennsylvania, and reimbursed itself by the pay roll deductions from employees (R. p. 130).

DECISION OF THE COURT

"How, then, can it be said that what the dealer does in Wisconsin are mere collateral acts, where they operate to bring the insurance into effect for the first time—give it life—and only by these acts are those essentials of in-

DECISION OF THE COURT

"Whether we look at the case before us in its general aspect or at the special circumstances under which Boseman became insured, we are of the opinion that the transaction of insurance occurred in Pennsylvania and

surance, identity of insured, identity of property, term of the risk, payment of the premium, consummated?

"It is evident that it is deemed of some importance that the retail purchaser receive the certificate as his visible evidence of indemnity, and the course of business adopted indicates that the delivery of the same to him is made in Wisconsin through the Postal Service as the agent of the insurer.

"The business done and to be done in Wisconsin under the plan in question, in our opinion, constitutes a transaction of business within the State."

not in Texas. If employees in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania, and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do not control. Let it be remembered that this policy was applied for, the first premium was paid and the policy was delivered in Pennsylvania, and that ordinarily fixes the place where an insurance contract is considered to be made.

"Since the certificate is not the contract nor at all necessary to the existence of the insurance, the time and place of its delivery are unimportant to the present inquiry."

WHEREFORE, your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and the proceedings of the said United States Circuit Court of Appeals for the Fifth Circuit had in the case numbered and entitled on its docket "No. 8077, Connecticut General Life Insurance Company, Appellant, v. John Boseman, Appellee," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment of the Fifth Circuit Court of Appeals heretofore entered be reversed and the judgment of the United States District Court for the Eastern District of Texas be affirmed,

and such further relief administered as to this Court may seem proper.

Respectfully submitted,

JOHN BOSEMAN,

By _____
Counsel for Petitioner.

_____
Of Counsel

NOVEMBER 12, 1936.

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

JOHN BOSEMAN, *Petitioner*
(Appellee below)

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Respondent
(Appellant below)

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinion of the Court Below

Opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. pp. 235-244) is reported in Federal Reporter, 2nd Series, Vol. 84, page 701.

II.

Jurisdiction

(a) The date of the judgment to be reviewed is July 14, 1936 (R. p. 235); petition for rehearing of said judgment was overruled by order dated August 27, 1936.

(b) The ruling made below and relied upon as a basis of this Court's jurisdiction is the order (R. p. 245) reversing (and rendering) the judgment of the trial court (R. p. 47).

(c) The statutory provision under which such jurisdiction is invoked is Section 240 of the Judicial Code, as amended by Act of February 13, 1925 (Chapter 229, Section 43, Statutes at Large 938, U. S. C. Title 28, Section 347).

(d) The cases believed to sustain said jurisdiction are: *Forsyth v. City of Hammond*, 166 U. S. 506, 17 S. Ct. 665, 41 L. Ed. 1095; *Lamborn v. National Bank of Commerce of Norfolk, Va.*, 276 U. S. 469, 48 S. Ct. 378, 72 L. Ed. 657; and *Bradford Electric Light Company, Inc., v. Clapper*, 284 U. S. 221, 52 S. Ct. 118, 76 L. Ed. 254.

III.

Statement of the Case

John Boseman sought recovery from the Connecticut General Life Insurance Company of the permanent and total disability benefits in the sum of Four Thousand ($4,000.00) Dollars under Group Policy G5039-R, issued by said company on April 1, 1932, to the employees of the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies. In addition to the principal amount of disability benefits plaintiff requested One Thousand ($1000.00) Dollars attorney's fees and twelve per cent penalty under the provisions of Article 4736 of the Revised Civil Statutes of Texas (said Article hereinafter set out in full in Appendix).

Prior to April 1, 1932, the Gulf Oil Corporation of Pennsylvania and the Gulf Refining Company of Texas cancelled two group policies of insurance then in force and under which Petitioner was insured, and on said date Contract G5039-R was issued and delivered by Respondent to the Gulf Oil Cor-

poration of Pennsylvania and the Gulf Refining Company of Texas (R. p. 108), insuring the employees of the Gulf Oil Corporation of Pennsylvania and/or its subsidiary and/or affiliated companies, including the Gulf Refining Company, conditioned upon the individual employees, desiring this insurance, making such election and complying with the terms of said contract (R. pp. 67-87). Petitioner was an employee of the Gulf Refining Company at Port Arthur, Texas, and elected to become insured under said master policy.

Policy G5039-R, among other things, contained the following provisions:

"Election of Insurance. An employee may elect insurance under this policy by completing any form of pay roll deduction order approved by the Employer.

"Employees Insured. Each employee electing the insurance before becoming eligible, will be insured automatically on the day he becomes eligible.

"The insurance on such employee shall be effective when he is accepted for insurance by the Company (R. pp. 73-74).

"Amount of Insurance. The amount of insurance on each insured employee is determined by (a) completed years of continuous service and (b) classification by amount of monthly salary as follows:

Completed Years of Continuous Service		Salary Class 1-B
7	or Amount of insurance	4,000"

(R. pp. 74-75.)

"Table of One Year Premiums per $1000 Insurance

"The charge for Permanent Total Disability represents 1% of each premium below age 60.

Attained Age of Insured Nearest Birthday	Premium Per $1000
41	8.18"

(R. pp. 79-80)

"Individual Certificate. The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled, and to whom payable" (R. p. 84).

"Contract. The policy and the application of the Employer, copy of which is attached to and made a part of this policy, *and the applications of the employees,* if any, shall constitute the entire contract between the parties."

The conditions precedent for an employee to become insured under this contract were as follows: (a) *release the Connecticut General Life Insurance Company from all claims and liability under policies G5039 and G5545* (R. p. 99); (b) *make application for insurance under Contract G5039-R* (R. p. 99); (c) *execute a pay roll deduction order to the employer for the purpose of collecting the individual employees' premiums on Policy G5039-R* (R. pp. 73 and 79); (d) *secure a certificate of insurance under said contract* (R. p. 84); (e) *pay the premiums* (R. p. 78) *(f) Accepted for insurance by company (R.*

No employee was insured under said policy unless he was eligible for such insurance, elected to become insured and complied with the conditions precedent, as above set out (R. pp. 67-87).

On March 7, 1932, John Boseman was eligible for insurance under Master Policy G5039-R and elected to become insured under such contract, and on that date did comply with the requirements of the contract and conditions precedent, and was delivered a certificate insuring him against permanent total disability and death in the amount of Four Thousand ($4,000.00) Dollars, and each month thereafter he paid his premium on said policy and certificate (R. pp. 99 and 102).

Boseman's application, release and pay roll deduction order were made and executed at Port Arthur, Texas; his certificate of insurance was delivered to him in Port Arthur, Texas; and

his premiums were paid and collected at Port Arthur, Texas (R. p. 102).

During the year 1932, the Connecticut General Life Insurance Company had a permit, was authorized and qualified to write life, health and accident insurance in the State of Texas (R. p. 88).

The appellant, at the time this contract was entered into, intended to and did insure all the employees of the Gulf Refining Company at Port Arthur, Texas, who were eligible for and elected to become insured (R. p. 117).

The Connecticut General Life Insurance Company, at all times material hereto, recognized, authorized and honored any and all transactions that the Gulf Refining Company of Texas made and had between it and its employees with reference to issuance, delivery, cancellation, extension and reinstatement of employees' insurance under Master Policy G5039-R, *as agent for and in behalf of the Connecticut General Life Insurance Company* (R. p. 121).

All claims by employees or beneficiaries of employees of the Gulf Refining Company at Port Arthur, Texas, under the master policy and the certificate issued thereunder, were paid in Texas (R. p. 90).

The only provision in regard to the payment of premiums in the master policy is as follows: "At the end of the first and each subsequent policy year this policy may be renewed by the payment of premiums as herein provided;" in accordance with the rates as above set out (R. p. 77). The certificate issued to Boseman, however, advises how such premiums are to be paid and who shall pay them, to-wit: "If an employee through neglect or otherwise fails to pay his premium in advance, his insurance is automatically cancelled at the end of the period for which the premium is paid" (R. p. 55).

Under the undisputed facts and the above quoted provisions of the policy the trial court held that the final acts necessary

to consummate the policy and to make it become effective insofar as Boseman was concerned were performed in Texas and, therefore, the laws of that State govern said policy (R. p. 43). Under such findings, the court held that the sixty-day notice provision was void, as provided by Article 5546 of the REVISED CIVIL STATUTES of Texas (R. p. 43), and entered judgment accordingly in favor of Petitioner (R. p. 47).

Appeal was duly perfected to the Fifth Circuit Court of Appeals, which reversed the judgment of the trial court, holding that the contract should be interpreted under the laws of the Commonwealth of Pennsylvania (R. p. 235). It was conceded on appeal that the verdict of the jury to the effect that Boseman was permanently and totally disabled within the terms of the contract was a proper and correct verdict.

IV.

Specification of Errors

(a) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in its finding that Contract G5039-R should be governed by the laws of Pennsylvania and not by the laws of Texas (R. p. 247).

(b) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in holding that the certificate of insurance issued to appellee under the master policy constituted no part of the contract between Connecticut General Life Insurance Company and the appellee Boseman (R. p. 247).

(c) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in holding that the undisputed evidence showed as a matter of law that the entire contract was applied for, issued and consummated in the State of Pennsylvania (R. p. 247).

(d) The Honorable United States Circuit Court of Ap-

peals for the Fifth Circuit erred in holding under the undisputed evidence that the policy of insurance sued on was not governed by Article 5054 of the REVISED CIVIL STATUTES of the State of Texas (see Appendix) (R. p. 247).

(e) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in holding that the Gulf Refining Company, under the undisputed evidence, was not acting as an agent for and in behalf of the Connecticut General Life Insurance Company in the issuing of the policy sued on and for the collection of premiums on said policy as defined in Article 5056 of the REVISED CIVIL STATUTES of the State of Texas (see Appendix) R. p. 248).

(f) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in holding that the contract sued on was one made between the employer and the insurance company for the benefit of the employee, requiring the employee to accept the contract as made, as the undisputed evidence shows such contract to be a tripartite contract with the employee named as the insured (R. p. 249).

(g) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in holding that this policy was applied for, the first premium paid and the policy delivered in Pennsylvania, and that same fixes the place where the insurance contract is made (R. p. 250).

(h) The Honorable United States Circuit Court of Appeals for the Fifth Circuit erred in holding that no transactions with reference to the issuance and consummation of the policy of insurance were had in Texas (R. p. 250).

V.

Argument

The undisputed evidence in this case reflects that the claimant herein, John Boseman, in 1918, made application for and

received what was known as a noncontributory group life policy, issued by the Connecticut General Life Insurance Company of Hartford, Connecticut, to the employees of the Gulf Oil Corporation of Pennsylvania and subsidiary companies, of which companies the Gulf Refining Company was one whose employees were entitled to the benefits of such policy. The premiums of this policy were paid entirely by the Gulf Oil Corporation of Pennsylvania and the amount of the policy increased yearly until it reached the maximum amount of Two Thousand Five Hundred ($2,500.00) Dollars. In 1925 the claimant, John Boseman, made application for and was issued a contributory group life policy by the Connecticut General Life Insurance Company of Hartford, Connecticut, in the amount of One Thousand Five Hundred ($1,500.00) Dollars, upon which policy of insurance the said John Boseman paid part of the premiums; this policy was designated as Policy No. G-5545. These two policies remained in full force and effect until on or about April 1, 1932, at which time such policies were cancelled by John Boseman, the Gulf Refining Company and the Gulf Oil Corporation of Pennsylvania (R. pp. 147-148).

The Honorable Circuit Court of Appeals, in reversing the finding of the District Court that the policy should be construed under the Texas laws, and determining that the laws of Pennsylvania should apply, predicated such holding upon five propositions, each of which we will discuss separately.

The court's first finding (R. p. 240) that "the certificate was not necessary to existence of the insurance," is not supported by the provisions of the policy nor by the authorities construing the same policy or similar contracts.

The Texas courts have held that the certicate is a necessary part of the contract of insurance in the cases of CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. MOORE, 75 S. W. (2d) 329 (opinion by the Ninth Court of Civil Appeals, ap-

proved by Supreme Court of Texas); CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. DENT, 84 S. W. (2d) 250; CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. LOCKWOOD, 84 S. W. (2d) 245; METROPOLITAN LIFE INSURANCE COMPANY v. WORTON, 70 S. W. (2d) 216 (decision by Fort Worth Court of Civil Appeals, approved by the Supreme Court of Texas); METROPOLITAN LIFE INSURANCE COMPANY v. WANN, 81 S. W. (2d) 298.

The same conclusions were reached in CHRYSLER SALES CORPORATION v. SMITH, 9 Fed. (2d) 666 (decision by Federal three-judge statutory court and affirmed by the Supreme Court of the United States); CARRUTH v. AETNA LIFE INSURANCE COMPANY, 122 S. W. 226 (by the Supreme Court of Georgia).

In the MOORE case, supra, the court held:

"Certificate of insurance issued to appellee under this master policy was a part of the original contract. Appellee was not insured under this policy and certificate until he agreed to its conditions."

In the DENT and LOCKWOOD cases, supra, in which this identical master policy was construed, the court had this to say:

"Policy G5039-R insofar as it covered appellee was a Texas contract. Connecticut General Life Insurance Co. v. Moore, supra, in construing Policy G-5545."

In the WORTON case, supra, construing a similar policy and plan of insurance:

"The group policy referred to in this case did not of itself insure the plaintiff or any other employees of the Standard Oil Company or any of its subsidiaries. It was a contract that it would insure such employees upon application made therefor by their employer. Prior to the date plaintiff in the case re-

ceived his certificate of insurance, sued on, he was not a beneficiary under the group policy.

"The certificate of insurance issued plaintiff embodied a separate and additional contract with the plaintiff only and was delivered to him in Texas where he was employed and where the premiums were collected by the insurance company while it was doing business in the State of Texas under a permit granted by the State and was governed by the laws of Texas."

On this proposition JUDGE LUSE, in CHRYSLER SALES CORPORATION v. SMITH, supra, spoke thus:

"It may be borne in mind that by the Michigan contract it is provided that 'insurer shall issue certificates to purchasers substantially in the form attached,' while the course of business is to mail such certificate to the retail dealer. It is evident that it is deemed of some importance that the retail purchaser receive the certificate as his visible evidence of indemnity, and the course of business adopted indicates that the delivery of same to him is made in Wisconsin."

The undisputed facts upon this proposition are that Boseman's certificate was delivered to him in Port Arthur, Jefferson County, Texas, by the Gulf Refining Company, who also collected the individual premiums upon such policy at said place (R. pp. 90-91).

The Circuit Court of Appeals' second holding (R. p. 240) that "the insurer did not authorize the employer or its agent to solicit Boseman in Texas to become insured," is not supported by the contract, the undisputed evidence and the authorities.

The master policy provides:

"An employee may elect insurance under this policy by completing a form of pay-roll deduction order approved by the employer" (R. p. 73).

The certificate provides:

"If employee, through neglect or otherwise, fails to pay his

premium in advance his insurance is automatically cancelled at the end of the period for which the premium is paid.

"An employee absent from work for any cause must immediately notify his superior in writing, giving reason for his absence, otherwise he will be considered as having left the employment and his insurance will be cancelled" (R. p. 55).

The undisputed facts upon this proposition were that the insurance company, acting through the Gulf Refining Company in Texas, before insuring Boseman required him to execute a release of all claims and liabilities under Policies G-5039 and G-5545, make application in writing for insurance under Policy G5039-R, execute a pay roll deduction order in a form approved by the employer for the purpose of paying his premiums and to pay his individual premiums (R pp. 90-91 and 98-101). Under the provisions of the policy and certificate and undisputed facts, the courts of Texas in CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. MOORE, supra, CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. DENT, supra, CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. LOCKWOOD, supra, held:

"The final acts necessary to make the policy effective were performed in the City of Port Arthur, Jefferson County, Texas. Therefore, the master policy together with the certificate of insurance must be construed as a Texas contract."

The same holding was made in METROPOLITAN LIFE INSURANCE COMPANY v. WORTON, supra, and METROPOLITAN LIFE INSURANCE COMPANY v. WANN, supra.

In CHRYSLER SALES CORPORATION v. SMITH, supra, which was affirmed by the Supreme Court of the United States, it was said:

"The dealer in Wisconsin clearly does these things: (1) He sells the car, including the insurance. (2) He collects the price, including the premium. (3) He fixes the term of the insur-

ance. (4) He selects the beneficiary (purchaser). (5) He notifies the insurance company of these details. All these things are essential to the completion of the insurance contract, and bring it into actual existence, and occur in Wisconsin, between residents of that State; the dealer acting with authority under the Michigan contract.

"When in addition it is considered that in effect the Chrysler dealer acts as solicitor of insurance as an incident to the sale of automobiles we have no doubt that the insurance received by each purchaser in Wisconsin is in fact consummated in that State."

The Circuit Court of Appeals' third holding (R. pp. 241-242) that "several of the cases cited strongly assert that the employer is not to be regarded as the agent of the insurer soliciting insurance in the employee's State, but as a representative of the employees in making and retaining the insurance. We are persuaded that this is a true view, although a different conclusion was maintained by a Texas Court of Appeals in CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. LOCKWOOD, supra, and CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. DENT, supra. There may arise cases in which group insurance is made a cover by an insurance company for soliciting business in a State in which it is not qualified to do business, but this is not such a case," is without support in the record and wholly ignores Article 5056 of the REVISED CIVIL STATUTES of the State of Texas, and the authorities applying such statute to the contract here involved.

The record reflects that at all times material the Respondent recognized, authorized and honored any and all transactions that the Gulf Refining Company of Texas made and had between it and its employees with reference to issuance, delivery and cancellation of employees' insurance under Policy G5039-R as agent for and in behalf of the Connecticut General Life Insurance Company (R. p. 121), and that at all

times material Respondent had a permit and was authorized and qualified to write life, health and accident insurance in the State of Texas (R. p. 88), and that the Gulf Refining Company in Texas performed certain acts which constituted it an agent as a matter of law under Article 5056 of the REVISED CIVIL STATUTES of Texas, to-wit: Acting for the insurance company in securing a release of claims under former policies (R. p. 99), and applications for insurance under this policy (R. p. 99), thereby soliciting insurance in Texas. It secured a pay roll deduction order for the purpose of collecting the individual employee's premiums (R. p. 73), and collected such premiums and transmitted them to the insurance company through its Pittsburgh office (R. p. 78) and delivered a certificate of insurance to Petitioner in Texas (R. p. 84).

The Circuit Court of Appeals recognized that the Texas courts in construing these acts and applying them to this policy had held that the Gulf Refining Company was acting as an agent for the insurer, but it failed to recognize that the basis for this holding by the Texas courts was Article 5056 of the REVISED CIVIL STATUTES of Texas, which article we set out in full in the Appendix. The Texas courts are uniform in holding that any person "who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State, or who takes an application other than for himself, any application for insurance or policy for insurance, to or from any company, or transmits same, or who shall receive or deliver a policy of insurance for any such company, or who shall collect or transmit any premiums of insurance or do or perform any other act or thing in making or consummating any contract of insurance for or with such insurance company, other than for himself, whether done with or without the instance or request of the insurance company, are agents for said company." CONNECTICUT GENERAL

LIFE INSURANCE COMPANY v. MOORE, supra; CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. DENT, supra; CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. LOCKWOOD, supra; SOUTHERN INSURANCE COMPANY OF NEW ORLEANS v. WOLVERTON HARDWARE COMPANY, 19 S. W. 615; CAMDEN FIRE INSURANCE COMPANY v. WANDELL, 195 S. W. 289.

The Circuit Court of Appeals' fourth holding (R. p. 242) that "if employees in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do not control," is not in accord with the great weight of authorities upon this proposition and is without support in the record and wholly ignores Articles 5054 and 5056 of the REVISED CIVIL STATUTES of Texas.

We heretofore have shown that the Texas courts in construing this and similar plans of insurance are in accord that the acts consummating this insurance were performed in Texas and were governed by Article 5056 of the REVISED CIVIL STATUTES of Texas.

In METROPOLITAN LIFE INSURANCE COMPANY v. WORTON, supra, which opinion was approved by the Supreme Court of Texas, it was stated that under Article 5054 of the REVISED CIVIL STATUTES of Texas any contract of insurance payable to a citizen or inhabitant of Texas issued by an insurance company doing business in this State shall be held to be a Texas contract, and we will demonstrate a little later that in addition to having an agent in Texas the Respondent was duly qualified and permitted to write insurance within this State. This, taken together with the fact that both the master policy and certificate were made payable to Boseman, rendered it a Texas contract.

The Supreme Court of the United States, in PALMETTO

FIRE INSURANCE COMPANY v. CONN, 71 L. Ed. 243, in affirming CHRYSLER SALES CORPORATION v. SMITH, supra, MR. JUSTICE HOLMES, in passing upon the question as to whether the acts performed in Ohio rendered the contract involved an Ohio contract, spoke thus:

"It will be held in some jurisdictions that the purchaser became a party to the contract with the insurance company. By universal consent he at least would become the beneficiary of a contract for his benefit. Whatever technical form may be given to the reasoning the substance is that by the acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist."

The fifth holding of the Circuit Court of Appeals (R. p. 236) that "the insurance company during the time here involved had a permit to do business in Texas, but had never qualified by making the required deposits, had no office or agent in Texas and had written no insurance there of any kind since 1917," is contrary to the record in this case and is predicated upon an erroneous interpretation of Article 5056 of the REVISED CIVIL STATUTES of Texas.

Regarding the question of agency we have shown that at all times material hereto the Gulf Refining Company was acting as an agent of the insurer in the light of Article 5056 of the REVISED CIVIL STATUTES of Texas and the authorities construing such article. With reference to the authority of the Connecticut General Life Insurance Company to transact business in this State the certificate of the Insurance Commissioner of the State of Texas, found on page 88 of the Record, shows:

"The Connecticut General Life Insurance Company of Hartford, Connecticut, has, according to sworn statement, complied with all requirements of law applicable thereto and is here authorized to pursue the business of life, health and accident insurance within this State for the year ending February 28, 1933."

Prudential Life Insurance Company of America v. Terry, 95 S. W. (2d) 1109 (Kentucky Court of Appeals); Metropolitan Life Insurance Company v. Green, 95 S. W. (2d) 1241 (Texas Court of Civil Appeals); Metropolitan Life Insurance Company v. Pribble, 82 S. W. (2d) 414 (Texas Court of Civil Appeals).

The proposition advanced by the respondent in its argument and brief that the contract involved is one to insure in the future and not insurance in praesenti is in accord with the principle announced in Chrysler Sales Corporation v. Smith, 9 Fed. (2d) 666.

Respondent's argument that if the rule of conflict of laws is applied in this case the contract would be subjected to the construction of the laws of the Forty-eight States of the Union, should not deprive petitioner of his rights. The manner in which the contract was made, respondent being chargeable with notice of the provisions of Article 5056 of the Revised Civil Statutes of Texas, and having by its acts subjected itself to the provisions of that Statute, thereby submitted the contract to the construction placed thereon by the Texas Courts, it being the duty of this Court not to judicially regulate insurance business or fix rules by which insurance contracts are to be made but apply the law applicable to this particular contract.

We submit that the Master Policy in itself did not insure Boseman, and that his insurance was not effectuated until certain acts transpired (Record, p. 99, 73, 78, 79, and 84). Irrespective of any contentions made, respondent intended to insure Boseman in Texas (Record, p. 117), collect his premiums in Texas (Records, p. 82, 55, 99), deliver his certificate in Texas (Record, p. 101) and pay his claim in that State (Record, p. 90). The company was in fact performing every essential in carrying on an insurance business in Texas, with the employer acting as agent for and in behalf of the company in the transaction of this business (Record, p. 95, 121).

The fact that the insurance company may never have paid taxes in the State or made the required deposit is of no consequence. It should not be permitted to take advantage of its own dereliction in this respect. That would be a matter between the state department and the insurance company and not between the insurance company and the insured.

This being a tripartite contract between Connecticut General Life Insurance Company, the Gulf Oil Corporation of Pennsylvania and Petitioner Boseman, wherein the employer was only the medium through which the insurance was written and could derive no benefits from it, but all the benefits, if any, derived from the insurance were by the employee, how then can it be said that the entire contract of insurance was applied for, issued and consummated in Pennsylvania and that the acts of the employer in Texas were mere collateral acts, when they operate to bring the insurance into effect for the first time—give it life—and only by these acts were those essentials of insurance, identity of insured, terms of the risk, and payment of the premiums consummated, in view of the fact that this contract was not insurance in praesenti, but one to insure in the future, requiring that certain conditions precedent be performed in Texas before Petitioner's insurance became effective?

In further support of our contention that the Honorable Circuit Court of Appeals for the Fifth Circuit was incorrect in holding that the contract should be interpreted under the laws of Pennsylvania, we respectfully direct the court's attention to MUTUAL LIFE INSURANCE COMPANY v. JOHNSON, 55 S. Ct. 154; POOL v. PERKINS, 101 S. E. 240; LUMBERMEN'S INSURANCE COMPANY v. MEYER, 197 U. S. 407, 25 S. Ct. 483, 49 L. Ed. 810; ILLINOIS BANKERS LIFE ASSOCIATION v. TALLEY, 68 Fed. (2d) 4; METROPOLITAN LIFE INSURANCE COMPANY v. BROWNELL, 68 Fed. (2d) 481.

To hold that the contract here involved is not a Texas con-

tract is in conflict with the holding of the three-judge statutory court in CHRYSLER SALES CORPORATION v. SMITH, supra, and destroys the great weight of authority upon this proposition, including the Texas courts' interpretation of Articles 5054 and 5056 of the REVISED CIVIL STATUTES of Texas, and imposes an interpretation of such statutes far beyond the contemplation of the courts.

Conclusion

It is, therefore, respectfully submitted that this case is one which justifies the exercise by the Court of its supervisory power in the granting of a writ of certiorari and review, and reversal of the decision of the court below, and affirm the judgment of the trial court.

Printed and filed herewith is a duly certified transcript of the entire record as same appears in the United States Circuit Court of Appeals for the Fifth Circuit.

Counsel for Petitioner.

Of Counsel

Appendix

Article 4736 of the REVISED CIVIL STATUTES OF TEXAS:

"In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss."

Article 5054 of the REVISED CIVIL STATUTES OF TEXAS:

"Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same."

Article 5056 of the REVISED CIVIL STATUTES OF TEXAS:

"Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than

for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter * * * "

Article 5546 of the REVISED CIVIL STATUTES OF TEXAS:

"No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void * * * "

DEC 7 1936
CHARLES ELMORE CROP
CLER

No. 531

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

JOHN BOSEMAN, *Petitioner*,

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Respondent

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

B. M. ANDERSON,
Hartford, Connecticut;
ORGAIN, CARROLL & BELL,
DUFF & CECIL,
Beaumont, Texas,
Of Counsel.

MAJOR T. BELL,
Attorney for Respondent.

INDEX

SUBJECT-MATTER

	Pages
STATEMENT	1-9
CORRECTION OF PETITIONER'S STATEMENTS NOT SUPPORTED BY RECORD	9-17
DISCUSSION OF PALMETTO FIRE INSURANCE COMPANY V. CONN, 272 U. S. 295, 47 S. Ct. 88, 71 L. Ed. 243	17-20
POINTS AGAINST THE PETITION	20-23
REMARKS	23-24
APPENDIX "A"	25-26

INDEX OF AUTHORITIES

CASES

Aetna Life Insurance Co. v. Dunken, 266 U. S. 389, 45 S. Ct. 129	12, 20
Allan v. Moline Plow Co., Inc., 14 Fed. (2d) 912	21
Allgeyer v. State of Louisiana, 165 U. S. 578	12, 20
All States Life Insurance Co. v. Tillman, 226 Ala. 245, 146 So. 393	22
Carpenter v. Providence-Washington Co., 16 Peters 495, 10 L. Ed. 1064	23
Chrysler Sales Corporation v. Smith, 9 Fed. (2d) 666	18
Chrysler Sales Corporation v. Spencer, 9 Fed. (2d) 674	18
City v. Lamson, 9 Wall. 477	21
Clark v. Gibbs, 69 Fed. (2d) 364	21
Coffin v. London & Edinburgh Insurance Co., 27 Fed. (2d) 616	20
Commercial Men's Association v. Benn, 261 U. S. 140, 43 S. Ct. 293, 67 L. Ed. 573	23
Coughlin v. South Carolina Railway Co., 142 U. S. 101	21
Connecticut General Life Insurance Co. v. Moore, 75 S. W. (2d) 329	16
Connecticut General Life Insurance Co. v. Speer, 48 S. W. (2d) 553	20, 21
Davis v. Metropolitan Life Insurance Co., 32 S. W. (2d) 1034	21
Duval v. Metropolitan Life Insurance Co., 82 N. H. 543, 136 Atl. 400, 50 A. L. R. 1276	20, 22
Eisen v. John Hancock Life Insurance Co., 91 S. W. (2d) 81	22
Equitable Life Insurance Co. v. Hall, 69 S. W. (2d) 977	21, 22
Fidelity and Deposit Co. of Maryland v. Tofya, 270 U. S. 246, 46 S. Ct. 331, 70 L. Ed. 664	19
Gallagher v. Simmons Hardware Co., 258 S. W. 16	22
Hardie v. Metropolitan Life Insurance Co., 7 S. W. (2d) 746	22
Harrison v. St. Louis & S. F., 232 U. S. 318, 34 S. Ct. 333	19

Pages

Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143, 54 S. Ct. 634 12, 20
Home Insurance Co. v. Dick, 281 U. S. 397, 50 S. Ct. 338 12, 20
Home Mortgage Co. v. Ramsey, 49 Fed. (2d) 738 21
Insurance Co. v. Walker, 94 Tex. 473 11
Joiner v. Metropolitan Life Insurance Co., 151 S. E. 540 22
Kingsland v. Missouri State Life Insurance Co., 66 S. W. (2d) 959 21
Leach v. Metropolitan Life Insurance Co., 261 Pac. 603 21
Magee v. Equitable Life Assurance Society, 244 N. W. 518 21
Maryland Casualty Co. v. Seay, 56 Fed. (2d) 322 11
McBride, et al., v. Connecticut General Life Insurance Co., 14 Fed. Sup. 2401 20, 22
Metropolitan Life Insurance Co. v. Greene, 75 S. W. (2d) 703 22
Metropolitan Life Insurance Co. v. Wann, 41 S. W. (2d) 50 (Tex. Com. App.) 22
Metropolitan Life Insurance Co. v. Wann, 81 S. W. (2d) 298 17
Metropolitan Life Insurance Co. v. Worten, 70 S. W. (2d) 216 16
Mutual Benefit Health & Accident Insurance Co. v. Baldridge, 70 Fed. (2d) 236 21
Mutual Life Insurance Co. v. Hill, 103 U. S. 551, 24 S. Ct. 538, 48 L. Ed. 788 21
Mutual Life Insurance Co. v. Hilton Green, 241 U. S. 613, 36 S. Ct. 676, 60 L. Ed. 1202 11
Mutual Life Insurance Co. v. Johnson, 293 U. S. 335, 55 S. Ct. 154, 79 L. Ed. 398 23
Mutual Life Insurance Co. v. Leibing, 259 U. S. 209, 42 S. Ct. 467 12, 20
New York Life Insurance Co. v. Dodge, 246 U. S. 357, 38 S. Ct. 337 19
New York Life Insurance Co. v. Head, 234 U. S. 149, 34 S. Ct. 879 19
Palmetto Fire Insurance Co. v. Beha, 13 Fed (2d) 500 18
Palmetto Fire Insurance Co. v. Conn, 272 U. S. 295, 47 S. Ct. 88, 71 L. Ed. 243 (lower court, 9 Fed. (2d) 202) 17, 18, 19
People v. Amaringe, 266 N. Y. 277, 194 N. E. 754 20
Peyton, et al., v. Metropolitan Life Insurance Co., 148 So. 721 22
Pritchard v. Norton, 106 U. S. 124 21
Rogers v. Metropolitan Life Insurance Co., 251 N. W. 312 21
Seeman v. Philadelphia Warehouse Co., 274 U. S. 403, 47 S. Ct. 626 21
State ex rel Kerns v. Connecticut General Life Insurance Co., 167 S. E. 833 22
Supreme Council of Royal Arcamun v. Green, 237 U. S. 531, 35 S. Ct. 724, L. R. A. 1916A 771 23
Swift v. Tyson, 16 Peters 1, 10 L. Ed. 865 23
Thompson v. Pacific Mills, 141 S. C. 303, 130 S. E. 619, 55 A. L. R. 1237 21
Thull v. Equitable Life Assurance Society, 40 Ohio 406 178 N. E. 850 22
United States Fidelity & Guaranty Co. v. Taylor, 273 S. W. 320, 283 S. W. 161 11
Washburn & Meon Manufacturing Co. v. Insurance Co., 179 U. S. 1, 21 S. Ct. 1, 45 L. Ed. 49 23
Western Union v. Scarborough, 68 S. W. (2d) 1027 21

Pages

Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 30 S. Ct. 190, 54 L. Ed. 355 19

Woodman v. Mixer, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, 41 A. L. R. 1384 23

TEXT

13 Corpus Juris, par. 819 21

STATUTES

Article 5056, Vernon Sayles R. C. S. of Tex., 1925 (set out in full in Appendix to Petitioner's Brief) 10

Article 5054, Vernon Sayles R. C. S. of Tex., 1925 (set out in full in Appendix to Petitioner's Brief) 11

Article 4736, Vernon Sayles R. C. S. of Tex., 1925 (set out in full in Appendix to Petitioner's Brief) 17, 20

Article 5546, Vernon Sayles R. C. S. of Tex., 1925 (set out in part in Appendix to Petitioner's Brief) 20

Purdon's Pennsylvania Statutes, Annotated, Title 40, Sec. 532 (set out in Appendix A of this Reply) 14, 25, 26

No. 531

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

JOHN BOSEMAN, *Petitioner*,

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Respondent

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The opinion of the Circuit Court of Appeals of the United States for the Fifth Circuit in this case is found in 84 Fed. (2d), page 701; likewise, it is found in the record filed herein on pages 234-241. In such opinion the Circuit Court of Appeals made full findings of fact, all supported by the record.

Omissions from the petition of important facts, and the inclusion of statements which, in respondent's opinion, are not in accord with the record, compel a longer reply than would be proper, ordinarily.

In March, 1932 (R. p. 86), the Gulf Oil Corporation of Pennsylvania (R. pp. 86 and 136), a Pennsylvania corporation (R. p. 144), made written application in Pittsburgh, Pennsylvania (R. p. 86), to the Connecticut General Life Insurance Company, a Connecticut corporation (R. p. 144), for the issuance and delivery to it of a policy of insurance commonly known as a "group policy." This application requested that the policy be issued to the Gulf Oil Corporation of Pennsylvania in Pennsylvania and be made effective April 1, 1932, and be governed by the laws of that Commonwealth (R. p. 86). After negotiations, all taking place in Pennsylvania and Connecticut (R. pp. 136-137), had solely between the Gulf Oil Corporation of Pennsylvania and the Connecticut General Life Insurance Company (R. pp. 136-137), such policy, numbered G5039R (R. p. 67), was issued and thereafter delivered to the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania (R. p. 137), bearing date of April 1, 1932) R. pp. 53; 137-138). This policy contained the following provision:

"This contract is issued and delivered in the City of Pittsburgh, in the Commonwealth of Pennsylvania, and is governed by the laws of that Commonwealth" (R. p. 85).

Nowhere in said policy was the State of Texas mentioned. Employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary companies in the various States of the Union, and in foreign countries, were insured by such policy (R. p. 142).

This policy was issued for the term of one year (R. p. 69), in consideration of the application of the Gulf Oil Corporation of Pennsylvania, the payment of a binding premium of One ($1.00) Dollar and the payment of the further premiums as provided in such policy (R. p. 69). In addition to such One ($1.00) Dollar binding premium, the policy made further provision for the establishment, on the effective date of said policy, as well as on each annual policy renewal date,

of an average annual premium rate (R. p. 78). The policy provided that the premiums, in addition to the binding premiums, were due to the insurance company immediately after the effective date of the group contract (R. p. 78). If the premiums were not paid when due, a period of thirty-one days' grace was allowed to the Gulf Oil Corporation of Pennsylvania for the payment thereof (R. p. 79).

Prior to the time that group contract G5039R was issued there was effective between the Connecticut General Life Insurance Company and the Gulf Oil Corporation of Pennsylvania two other policies of group insurance, known as G5039 and G5545 (R. pp. 129-136, 145-148). Each of these two earlier policies was likewise applied for, issued and delivered in the Commonwealth of Pennsylvania (R. pp. 129-136, 145-148). The written application made by the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, for the issuance of group contract G5039R, requested that the previous two policies be cancelled March 31, 1932 (R. pp. 86, 147), and such was done (R. pp. 129-130, 147).

The new policy, to-wit, G5039R, specified the terms and conditions under which it insured the employees of the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies (R. pp. 67-68). The benefits extended by such group contract were those providing for payment upon death or the permanent total disability of an employee insured thereunder (R. pp. 68-71). All employees of the Gulf Oil Corporation of Pennsylvania and affiliated and subsidiary companies were eligible for insurance thereunder when they had completed the required period of service specified therein (R. pp. 72-74). The amount of insurance which the employee might receive under the group contract was dependent upon length of service and the salary received by him (R. pp. 74-77). An employee who elected insurance under such group contract was insured automatically on the date he became eligible (R. p. 73). This election of the employee

was made by completing any form of pay roll deduction order approved by Gulf Oil Corporation of Pennsylvania (R. p. 73). On the first of each month the Gulf Oil Corporation of Pennsylvania was required to notify the insurance company with respect to the employees who had become eligible for insurance under such policy, or whose insurance had been cancelled by reason of termination of employment; but even though such notice was not given at such time, the employee's insurance became effective upon his date of eligibility if the notice were given within a reasonable time after such (R. p. 81). The employee's insurance was terminated under such group contract when his employment with the Gulf Oil Corportation of Pennsylvania and its affiliated and subsidiary companies ended (R. pp. 81-83). The policy further provided:

"The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms or conditions outlined in the policy, but will show the insurance protection to which the employee is entitled, to whom payable, and the following conversion privilege:" (R. p. 84.)

And again:

"The policy and the application of the Employer, copy of which is attached to and made a part of this policy, and the applications of the employees, if any, shall constitute the entire contract between the parties" (R. p. 85).

And again:

"Only the President or a Vice-President, the Secretary or Assistant-Secretary, has power on behalf of the Company to make or modify this contract of insurance" (R. p. 85).

One of the conditions of a claim for permanent total disability benefits by an employee insured under such group contract was that such employee should give written notice of

such claim to the Connecticut General Life Insurance Company during his period of employment or within sixty days thereafter (R. pp. 84-85).

John Boseman had no connection with the securing of this policy of group insurance (R. pp. 86, 136-138). He was an employee of the Gulf Refining Company at Port Arthur, Texas (R. p. 106), which refining company was a subsidiary or affiliated company of the Gulf Oil Corporation of Pennsynvania (R. p. 92). All transactions with reference to the various employees insured under such group contract were had solely between the Connecticut General Life Insurance Company from its Hartford, Connecticut, office and the Gulf Oil Corporation of Pennsylvania from its Pittsburgh, Pennsylvania, office (R. pp. 90-94, 136-142, 131, 149-155). The Gulf Oil Corporation of Pennsylvania paid all premiums to the insurance company which became due for insurance under such group contract, and all refunds because of unearned premiums thereunder were made by the insurance company from Hartford, Connecticut, to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania (R. pp. 138, 149). In fact, none of the subsidiary companies had any correspondence or transactions with the Connecticut General Life Insurance Company (R. pp. 136-142, 144, 144-145), but instead, the subsidiary companies dealt only with the Gulf Oil Corporation of Pennsylvania (R. pp. 90-94, 103). Likewise, no employee insured under such group contract at any time transacted any business pertaining to his insurance thereunder with the insurance company (R. pp. 138-139, 142), but instead, dealt solely with his employer (R. pp. 90-94, 103). The insurance company received no application from any employee for insurance, but instead, the insurance company was notified from Pittsburgh, Pennsylvania, by the Gulf Oil Corporation of Pennsylvania, that an employee had become insured under such group contract, or that an employee's insurance under such group contract had terminated (R. pp.

100, 139, 150, 157). If the notice stated that an employee had become insured thereunder, in accordance with such group contract (R. p. 84), the insurance company issued a certificate to the Gulf Oil Corporation of Pennsylvania, evidencing the amount of the employee's insurance under such group contract, the certificate bearing the name of the insured employee, the effective date, and the name of the beneficiary (R. pp. 139, 150). This certificate was delivered by the insurance company to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, where the insurance company's connection with said certificate ceased (R. pp. 126-127, 139, 140, 150). At no time was the Gulf Oil Corporation of Pennsylvania, or the Gulf Refining Company, or any official or employee of either, authorized to act with reference to said group contract or any matter pertaining thereto or thereunder on behalf of the insurance carrier (R. pp. 140, 147-148). The employer represented and looked after the insurance of the employees, acting in behalf of such employees, under such contract (R. pp. 93-94, 103-104). The Gulf Refining Company did, without control of the insurance company, take a pay roll deduction order from John Boseman and other insured employees for its own records and protection (R. pp. 91-93, 99-100), but did not furnish any paper executed by John Boseman to the insurance company (R. pp. 100, 104, 124, 157). The insurance company in nowise controlled any deductions by the employer from the employee's salary (R. pp. 119, 138, 140, 157), but instead, the Gulf Oil Corporation of Pennsylvania, as it was obligated to do, paid all premiums to the insurance company on the first day of the month on the employee's insurance, under such contract (R. pp. 138, 149). In fact, the employer reimbursed itself from the employee for a portion of the premiums paid by such employer for such employee's insurance (R. p. 92), but this was done without knowledge of or control from the insurance company (R. pp. 119, 124, 157).

John Boseman, petitioner herein, had, while an employee of the Gulf Refining Company at Port Arthur, Texas, been insured under the two previous contracts (R. pp. 147-148), and was, therefore, eligible for insurance under group contract G5039R (R. p. 72). On March 7, 1932 (R. pp. 99-100), prior to the effective date of group contract G5039R (R. p. 69), the Gulf Refining Company took from John Boseman at Port Arthur, Texas, a pay roll deduction order, which authorized it to deduct a certain monthly amount from the pay roll of John Boseman for the insurance that the Gulf Oil Corporation of Pennsylvania would extend to John Boseman under group contract G5039R. This deduction order provided for a deduction of 60 cents per month per $1,000.00 of insurance held by John Boseman. The Gulf Oil Corporation of Pennsylvania was therefore seeking reimbursement from John Boseman for only a portion of the premium it paid upon him for insurance under such group contract (R. pp. 92, 119). This pay roll deduction order became a part of the permanent records of the Gulf Refining Company at Port Arthur, Texas (R. pp. 92, 100). In due course, the Gulf Oil Corporation of Pennsylvania, from Pittsburgh, Pennsylvania, notified the respondent herein at Hartford, Connecticut, that John Boseman had become insured under such group contract, effective April 1, 1932, in the amount of $4,000.00 (R. p. 150). This notice was given to the respondent about May 1, 1932 (R. p. 150), and on or about that date (R. p. 150), as the group contract provided, in accordance with the Pennsylvania statute, the respondent issued in Hartford, Connuecticut (R. p. 150), a certificate evidencing the insurance of John Boseman under such group contract, stating the amount of same, the beneficiary, the effective date of same, which was April 1, 1932 (R. pp. 51-60, 150). This certificate notified the insured employee of various terms and conditions of the group contract, quoting the same provision with refer-

ence to notice of claim within sixty days after the termination of employment (R. p. 59), as set forth in the master contract. It further notified the employee that he was insured under and subject to the terms of group contract G5039R (R. pp. 51-52, 60), which was executed and delivered in the City of Pittsburgh, Pennsylvania (R. p. 52). This certificate was delivered by the respondent to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania (R. pp. 150-151). Thereafter, at Port Arthur, Texas (R. p. 109), the Gulf Refining Company delivered same to John Boseman on July 20, 1932 (R. p. 100), approximately three and one-half months after he became insured under the contract here involved (R. p. 151). On October 8, 1932, his employment with the Gulf Refining Company was terminated (R. pp. 101, 107, 152-153), and his insurance under the group contract then cancelled (R. pp. 151-153). He accepted a refund from the Gulf Refining Company at that time for the remainder of the month of October, 1932, with reference to the contribution he had made to his employer, for his insurance under group contract G5039R for that month (R. pp. 102-103). Though he returned to the Gulf Refining Company in March, 1933, again seeking employment (R. pp. 102, 110), he gave no notice of a claim for permanent total disability as asserted in this suit, despite the requirements of said group contract (which requirement was quoted in his certificate), until April, 1933 (R. pp. 65, 122-123), more than six months after the termination of his employment.

The Connecticut General Life Insurance Company has not done an insurance business in the State of Texas at any time since 1917, and maintains no insurance agents of any kind or character therein (R. pp. 142-144). It has never written any insurance in the State of Texas (R. p. 143). While it has secured a permit to do business in the State of Texas, it has never complied with the further prerequisites of the Texas

law to do, and has not done, an insurance business therein (R. p. 143).

(Nine copies of respondent's original brief in the Circuit Court of Appeals are filed herewith and marked "Respondent's Appendix B," and nine copies of respondent's reply brief in the Circuit Court of Appeals are also filed herewith, marked "Respondent's Appendix C.")

Correction of Petitioner's Statements Not Supported by Record

On page 3 of the petition, petitioner states that the holding that group contract G5039R was a Pennsylvania contract ignored the obvious intention of the parties thereto. The record is to the contrary (R. pp. 85, 90, 136-138).

On page 3 of the petition it is stated that the Fifth Circuit Court of Appeals decided this case by construing Texas statutes as a basis for its judgment contra to the legislative intent and reversed the meaning given by the Texas courts. The Fifth Circuit Court of Appeals did not rely upon, interpret or refer to any Texas statute to reach its decision that the contract involved was subject to the Pennsylvania law.

On page 9 it is stated that group contract G5039R was issued to the employees of the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies. This policy was issued in Pennsylvania to the Gulf Oil Corporation of Pennsylvania, the only party applying therefor (R. pp. 136-138, 85, 86, 87, 69, 5, plaintiff's petition, lower court).

On page 9 of the petition it is stated that on April 1, 1932, the Gulf Oil Corporation of Pennsylvania and the Gulf Refining Company of Texas cancelled the two previous policies.

On page 15 of the petition it is stated that "such policies were cancelled by John Boseman, the Gulf Refining Company, and the Gulf Oil Corporation of Pennsylvania." These two prior policies were cancelled upon application of the Gulf

Oil Corporation of Pennsylvania made in Pittsburgh, Pennsylvania. Neither the petitioner herein nor the Gulf Refining Company was a party thereto (R. pp. 86, 135-136).

On page 13 of the petition it is stated that it was admitted in the Circuit Court of Appeals by respondent that the verdict of the jury in the trial court that John Boseman was totally and permanently disabled was a proper and correct verdict. Respondent admitted in the Circuit Court of Appeals that John Boseman raised an issue of fact as to his disability in the lower court (Appendix "B," p. 2).

On pages 14 and 15 it is stated that in 1918 and 1925, John Boseman made application to and received from the Connecticut General Life Insurance Company group policies G5039 and G5545. While John Boseman was insured by virtue of such two group policies, each was issued in the State of Pennsylvania to the Gulf Oil Corporation of Pennsylvania upon the sole application of such Oil Corporation (R. pp. 127, 136, 147-148).

On pages 18, 19 and 20 of the petition, the statement is made that the Texas courts in the group insurance cases there cited, because of and based upon Article 5056, held that the employer was an agent of the insurance carrier in connection with employees insured under group insurance contracts (Article 5056 of the REVISED CIVIL STATUTES OF TEXAS, found in Appendix to petition, p. 25). None of these cases passed upon, or discussed, the question of agency of the employer for the insurance carrier. None of these cases even refer to Article 5056 of the REVISED CIVIL STATUTES OF TEXAS. It is to be noted that said Article provides that one who does certain acts *on behalf of an insurance company will* "be held to be the agent of the company for which the act is done, or the risk is taken, *as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter.*" (Italics ours.) This Article does not establish agency where none, in fact, exists.

In the case of INSURANCE COMPANY v. WALKER, 94 Tex. 473, by the Texas Supreme Court, the court stated, with reference to this Article (which at the time of such decision was Article 3093, quotation p. 479):

"This law declared the person performing the act specified to be the agent of the company for which he acted, either by appointment or who assumed to act without authority for the purpose of punishing the person performing the acts, and to make him liable to the State and others for the acts so performed, and also to make him agent of the company so far as to render it liable for taxes for doing business within the limits of this State, *but that act did not purport to confer any power or authority upon such person with reference to the making of contracts or to make the insurance company liable for any act which he did except as specified in that law.* (Italics ours.)

"If the language quoted from Article 3093 be construed to refer to the chapter of which it is a part instead of the original act of the Legislature for the scope of the agency, then the effect of the law in declaring such person to be the agent of the insurance company cannot be held to confer powers to contract which are not expressed in the law, but the matter of authority would depend upon the terms of his appointment or upon facts which would show the extent of his power."

See also UNITED STATES FIDELITY & GUARANTY CO. v. TAYLOR (Amarillo Court of Civil Appeals), 273 S. W. 320 (Texas Commission of Appeals, judgment adopted and approved by Texas Supreme Court, 283 S. W. 161); MARYLAND CASUALTY CO. v. SEAY, 56 Fed. (2d) 322; MUTUAL LIFE INSURANCE COMPANY v. HILTON GREEN, 241 U. S. 613, 36 S. Ct. 676, 60 L. Ed. 1202.

Petitioner states that Article 5054 of the REVISED CIVIL STATUTES OF TEXAS (set forth in the Appendix to petition, p. 25), requires the contract here to be construed under the Texas law, and the Texas courts have so interpreted said statute. If so interpreted to apply to a contract made and de-

livered in the State of Pennsylvania, even though benefits under same are payable to a citizen in Texas, it violates the United States Constitution. AETNA LIFE INSURANCE COMPANY v. DUNKEN, 266 U. S. 389, 45 S. Ct. 129; HARTFORD ACCIDENT & INDEMNITY COMPANY v. DELTA & PINE LAND COMPANY, 292 U. S. 143, 54 S. Ct. 634; MUTUAL LIFE INSURANCE COMPANY v. LEIBING, 259 U. S. 209, 42 S. Ct. 467; ALLGEYER v. STATE OF LOUISIANA, 165 U. S. 578; HOME INSURANCE COMPANY v. DICK, 281 U. S. 397, 50 S. Ct. 338.

Upon page 23 of the petition it is stated that the Gulf Oil Corporation of Pennsylvania could derive no benefits from the group contract. It had paid a consideration therefor and obligated itself to pay the further consideration. It had applied for same, assuming all responsibility in connection therewith, to the Connecticut General Life Insurance Company. The plan of insurance was paternalistic. The Gulf Oil Corporation of Pennsylvania desired to aid is employees in this regard. It had the advantage of having the irrevocable right to provide for the protection of its employees under this contract for the term of same. It would naturally receive advantages derived through such contract through the increased happiness and contentment of, and result in the increased production by, its employees.

On page 21 of the petition it is stated that group contract G5039R, the master policy, and the certificate, were both made payable to Boseman. John Boseman is not mentioned in group contract G5039R, nor is any condition of payment to him specified therein.

On pages 4, 5, 12, 18, 19, 20 and 22 of the petition, the statement is made that the evidence showed that the Gulf Refining Company both acted, and was recognized by the insurance company, as agent of the insurance company for the purpose of this insurance. The record shows to the contrary (R. pp. 140, 157, 158, 93, 103). Petitioner apparently relies

upon two or three words segregated out of a long answer to a long question which, when considered as a whole, does not justify such conclusion. Mr. Laird testified (R. p. 121), that the Connecticut General Life Insurance Company honored transactions of the Gulf Oil Corporation of Pennsylvania or affiliated or subsidiary companies in connection with group contract G5039R "*as were in accordance with the terms of the policy.*" Certainly the insurance company honored the obligations it had assumed to the other party, the Gulf Oil Corporation of Pennsylvania. It does not follow that such Gulf Oil Corporation of Pennsylvania or the Gulf Refining Company, which companies were upon the opposite side from this respondent in contract G5039R, were the agents of this respondent.

On pages 4, 5 and 11 petitioner sets forth certain conditions prerequisite, according to his contention, that had to occur prior to the time the petitioner became insured under group contract G5039R. Petitioner states these were:

(a) *Release of claims under group contracts G5039 and G5545.* Nowhere in the record is there any requirement that such releases be taken. Such was included by the Gulf Refining Company in the pay roll deduction order taken from John Boseman for its own permanent records and which Gulf Refining Company chose to refer to as an application (R. pp. 99-100), which was neither authorized nor known to the Connecticut General Life Insurance Company (R. pp. 91-92, 100, 119). This instrument (R. pp. 99-100), which is sometimes called a release by the petitioner and again an application, and again a pay roll deduction order, was not directed to the Connecticut General Life Insurance Company, but included therein this statement: "In making this application I agree to be bound by the rules governing this insurance and I authorize the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies to deduct in

advance the proper amount per month from my pay to apply towards the premium of insurance" (R. p. 100), which further reveals that it was taken by the Gulf Refining Company for its own protection and of concern to the employees and employer alone (R. p. 157). This record was still at the Gulf Refining Company on July 20, 1932 (R. p. 100), and was still a part of its permanent records at the time of the trial in the lower court (R. p. 100).

(b) *Application for insurance under contract G5039R.* The group policy did specify, *as the Pennsylvania law required* (see PURDON'S PENNSYLVANIA ANN. STATUTES, Title 40, Sec. 532, in Appendix to this reply), that "the policy and application of the employer, copy of which is attached to and made a part of this policy, and the application of the employee, *if any*, shall constitute the entire contract between the parties" (R. p. 85). This instrument, whatever it might be designated, was an instrument taken, as shown above, by the Gulf Refining Company, without control, supervision or knowledge of the insurance company, and was in nowise furnished to or required by the insurance company, and became a permanent record of the Gulf Refining Company.

(c) *Pay roll deduction orders.* The foregoing, since the instrument is referred to by appellee in some instances as the pay roll deduction order, is likewise pertinent hereunder. The group policy specified (R. p. 73) "an employee may elect insurance under this policy by completing *any form of pay roll deduction order approved by the employer.*" This left the matter entirely to the employer and the employee as to the form of order and any amount deducted thereunder. The entire obligation for the payment of the premiums to the insurance company was upon, and assumed by, the Gulf Oil Corporation of Pennsylvania (R. pp. 124, 138, 149).

(d) *The certificate.* The certificate was not necessary to,

but merely evidentiary of, the insurance of John Boseman. He was insured under the group contract from April 1, 1932, until July 20, 1932 (R. p. 100), without a certificate having been received by him. Respondent did not deliver said certificate to John Boseman, or anyone else, in Texas. It was delivered to the Gulf Oil Corporation of Pennsylvania, in Pennsylvania, as the policy so required, and such final act, on the part of this respondent, took place in that State (R. p. 118, 126, 139, 140).

(e) *Payment of premiums.* There was no condition in the policy that the employee had to pay the premiums. However, the employer did set a rate of contribution that it would collect from its insured employees to cover a portion of the funds paid by the employer for such employee's insurance. This was not a condition imposed by respondent.

Before the Connecticut General Life Insurance Company knew that John Boseman's insurance was cancelled on October 8, 1932, it billed the Gulf Oil Corporation of Pennsylvania, and that company, recognizing its sole obligation to this respondent for the premiums, paid in advance to this respondent the premiums for the months of October, November and December, 1932 (R. p. 152). At such time the Gulf Refining Company, in accordance with its arrangement with John Boseman, had only collected from him by way of reimbursement to itself the sum of $2.40, his contribution to his employer for the month of October, 1932 (R. pp. 102-103).

With reference to all of these so-called prerequisites contended for by petitioner, regardless of what was necessary to be done by the petitioner to become eligible for insurance under such policy, when he did so he became insured by virtue of a binding prior contract duly made in the State of Pennsylvania, the law of which State entered into, controlled and became a part of such contract.

Petitioner on page 12 of his brief states that all payments were made in Texas with reference to claims under the master policy. This is contra to the record (R. p. 139).

The petition states on page 12 that contract G5039R was entered into with the intention to insure all employees of the Gulf Refining Company at Port Arthur, Texas, who were eligible and elected to become insured. The State of Texas is nowhere mentioned in this group contract. This contract covered employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary or affiliated companies in the various States of the Union and in foreign countries. Employees in Texas were eligible for insurance. Likewise, employees in various other States were eligible and were insured thereunder. The Gulf Oil Corporation of Pennsylvania and its subsidiary and affiliated companies alone, without intervention or control of this respondent, had the right under such group contract to locate their employees and to determine which employees (located wherever they might be) should be covered under such policy after it was issued.

Petitioner on page 15 to 16 cites certain cases by the Texas Courts of Civil Appeals to sustain his contention, stating that the opinion in the case of CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. MOORE, 75 S. W. (2d) 329, was approved by the Supreme Court of Texas. The Supreme Court of Texas did not pass on the matter, but dismissed application for writ of error in the case on the ground that the Supreme Court of Texas was without jurisdiction in the matter. As to the statement on page 16 of the petition that the opinion by the Court of Civil Appeals in METROPOLITAN LIFE INSURANCE COMPANY v. WORTEN, 70 S. W. (2d) 216, was approved by the Supreme Court of Texas, the Supreme Court of Texas [redacted] refused to grant an application for writ of error in the matter. The Texas Supreme Court has not decided a case involving the point here raised. However, in the case

of METROPOLITAN LIFE INSURANCE COMPANY v. WANN, 81 S. W. (2d) 298, in which the Fort Worth Court of Civil Appeals held that attorney's fees and penalties under Article 4736, REVISED CIVIL STATUTES OF TEXAS, could be assessed under a Metropolitan Life Insurance Company group contract, the facts therein relied upon by the insurance company being less favorable than the facts here involved, the Texas Supreme Court recently has granted a writ of error on the judgment of the Court of Civil Appeals.

PALMETTO FIRE INSURANCE COMPANY v. CONN, 272 U. S. 295, 47 Sup. Ct. 88, 71 L. Ed. 243.

Petitioner, in his application, states that the above decision is upon the facts similar to the case here involved and that the law in that case was by this Honorable Court determined contra to the holding of the Fifth Circuit Court of Appeals in the instant case.

The case of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, involved solely the question of the right of a State to impose limitations upon a foreign corporation, such limitations not being contrary to the United States Constitution, as a prerequisite for that corporation securing and retaining a license to do business in such State. In nowise was the question of what law controlled a claim by an assured under such contract involved or decided by this Honorable Court in such case. In such opinion (47 Sup. Ct., page 88), this Honorable Court stated:

"The question is whether this transaction brought the plaintiff within the taxing power of Ohio. If it did not, the power of the State to exclude the company altogether could not be used as a means to accomplish a result beyond the State's constitutional powers. Fidelity & Deposit Company of Maryland v. Tofya, 270 U. S. 246, 46 Sup. Ct. 331, 70 L. Ed. 664."

The opinions of the lower courts in the case of PALMETTO

FIRE INSURANCE COMPANY v. CONN, supra, recognized, as respondent interprets them, that the contracts themselves were contracts under the laws of the State of Michigan. PALMETTO FIRE INSURANCE COMPANY v. CONN, 9 Fed. (2d) 202 (on pages 202 and 203); CHRYSLER SALES CORPORATION v. SMITH, 9 Fed. (2d) 666 (on page 671); CHRYSLER SALES CORPORATION v. SPENCER, 9 Fed. (2d) 674 (on page 678).

The question involved in such suits, as well as the opinion of this Honorable Court, when it passed upon such question, was further so interpreted by the highest court of New York in the decision of PEOPLE v. AMARINGE, 266 N. Y. 277, 194 N. E. 754.

Subsequent to the decisions of the lower courts in the case of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, a three-judge United States District Court in the State of New York, in PALMETTO FIRE INSURANCE COMPANY v. BEHA, 13 Fed. (2d) 500, had before it the question of whether or not the license of the Palmetto Fire Insurance Company in New York should be cancelled, said State not having statutes similar to those of the three States involved in the other three suits. In its opinion this court in New York stated:

"The State cannot forbid contracts of insurance relating to risk within its limits from being made between a citizen and a corporation in another State" (quotation from page 504).

And again:

"The insurance effected under the plan is effected in Michigan and not in New York" [redacted].

And again:

"The contract here may be construed as made in a foreign State for the benefit of a third party."

The BEHA case, supra, was subsequently cited by this Hon-

orable Court with apparent approval, in the decision of FIDELITY AND DEPOSIT COMPANY OF MARYLAND v. TOFYA, 270 U. S. 246, 46 Sup. Ct. 331, 70 L. Ed. 664.

This Honorable Court, in deciding the cases involved in the appeal of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, recognized the principle that a State has the right to entirely prohibit the entry of a foreign corporation, and consequently has the right, as a prerequisite to licensing such corporation in such State, to exact of such corporation conditions so long as such conditions exacted do not violate the constitutional rights of the entering corporation. That a State, even as a condition for licensing a foreign corporation to do business in that particular State cannot force such licensed corporation to submit its contracts made in every other State to the laws, and interpretation under the laws, of the State so licensing such foreign corporation; see NEW YORK LIFE INSURANCE COMPANY v. HEAD, 234 U. S. 149, 34 Sup. Ct. 879; HARRISON v. ST. LOUIS & S. F., 232 U. S. 318, 34 Sup. Ct. 333; WESTERN UNION TELEGRAPH COMPANY v. KANSAS, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; NEW YORK LIFE INSURANCE COMPANY v. DODGE, 246 U. S. 357, 38 Sup. Ct. 337, in which latter case it is said:

"Under the laws of New York where the parties made the loan agreement now before us, it was valid; also it was one which the Missouri Legislature could not destroy or prevent a citizen within its borders from making beyond them by direct inhibition; and applying the principles accepted and enforced in Insurance Co. v. Head, *we think the necessary conclusion is that such a contract could not be indirectly brought into subjection to the statutes of the State and rendered ineffective through a license authorizing the insurance company there to do business.*" (Italics ours.)

The case of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, was relied upon by petitioner herein in the Cir-

cuit Court of Appeals and such cases fully discussed by such court in holding adversely to the petitioner (84 Fed. (2d) 704-705.) This case was fully discussed at pages 13-21 of respondent's reply brief in the Circuit court of appeals. (Respondent's Appendix "C.")

Points Against the Petition

POINT ONE

Neither Article 4736 nor Article 5546 of the REVISED CIVIL STATUTES OF TEXAS could constitutionally be applied to group contract G5039R and petitioner's insurance thereunder, since all of petitioner's rights were derived from, dependent upon, and subject to, a contract made in the State of Pennsylvania.

AETNA LIFE INSURANCE CO. v. DUNKEN, 266 U. S. 389, 45 S. Ct. 129; HARTFORD ACCIDENT & INDEMNITY CO. v. DELTA & PINE LAND CO., 292 U. S. 143, 54 S. Ct. 634; HOME INSURANCE CO., ET AL., v. DICK, ET AL., 281 U. S. 397, 50 S. Ct. 338; ALLGEYER v. STATE OF LOUISIANA, 165 U. S. 578; MUTUAL LIFE INSURANCE CO. OF NEW YORK v. LEIBING, 259 U. S. 209, 42 S. Ct. 467; MCBRIDE, ET AL., v. CONNECTICUT GENERAL LIFE INSURANCE CO., 14 Fed. Sup. Ct. 240; COFFIN v. LONDON & EDINBURGH INSURANCE CO., 27 Fed. (2d) 616; CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. SPEER, 48 S. W. (2d) 553 (Sup. Ct. Ark.); DUVAL v. METROPOLITAN LIFE INSURANCE CO., 82 N. H. 543, 136 Atl. 400, 50 A. L. R. 1276; STATE OF NEW YORK, ET AL., v. AMARINGE (N. Y., 194 N. E. 754.

POINT TWO

The parties to group contract G5039R having specified that the Pennsylvania law would control same, and the State of Pennsylvania having a substantial interest in and connection with the contract, such expressed intent of the parties will be given force and effect.

MUTUAL LIFE INS. CO. v. HILL, 193 U. S. 551, 24 Sup. Ct. 538, 48 L. Ed. 788; SEEMAN v. PHILADELPHIA WAREHOUSE CO., 274 U. S. 403, 47 Sup. Ct. 626; MUTUAL BENEFIT HEALTH & ACCIDENT INSURANCE CO. v. BALDRIDGE, 70 Fed. (2d) 236; CLARK v. GIBBS, 69 Fed. (2d) 364; COUGHLIN v. SOUTH CAROLINA RAILWAY CO., 142 U. S. 101; PRITCHARD v. NORTON, 106 U. S. 124.

POINT THREE

Petitioner, being a third party to the contract sued upon, cannot question the validity or effect of the provision that the Pennsylvania law should control, but must accept said contract, with limitations contained therein, as he found same.

CITY v. LAMSON, 9 Wall. 477; WESTERN UNION v. SCARBOROUGH, 68 S. W. (2d) 1027 (Texas Com. App.); THOMPSON v. PACIFIC MILLS, 141 S. C. 303, 130 S. E. 619, 55 A. L. R. 1237; MAGEE v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE U. S., 244 N. W. 518 (Sup. Ct. of N. C.); KINGSLAND v. MISSOURI STATE LIFE INSURANCE CO., 66 S. W. (2d) 959 (Mo. Court of Appeals); EQUITABLE LIFE INSURANCE CO. v. HALL, 69 S. W. (2d) 977 (Ky. Court of Appeals); DAVIS v. METROPOLITAN LIFE INSURANCE CO., 32 S. W. (2d) 1034 (Tenn.); HOME MORTGAGE CO. v. RAMSEY, 49 Fed. (2d) 738; ALLAN v. MOLINE PLOW CO., INC., 14 Fed. (2d) 912; 13 CORPUS JURIS, par. 819.

POINT FOUR

Such acts as performed by the Gulf Refining Company in Texas with its employees were not done as an agent of the insurance carrier, but rather as a representative of the employees.

CONNECTICUT GENERAL LIFE INSURANCE CO. v. JUDGE SPEER, 48 S. W. (2d) 553 (S. Ct. of Ark.); ROGERS v. METROPOLITAN LIFE INSURANCE CO., 251 N. W. 312 (S. Ct. of Mich.); LEACH v. METROPOLITAN LIFE INSURANCE CO.,

261 Pac. 603 (S. Ct. of Kan.); DUVAL v. METROPOLITAN LIFE INSURANCE CO., 136 Atl. 400, 50 A. L. R. 1276; EQUITABLE LIFE INSURANCE CO. v. HALL, 69 S. W. (2d) 977; PEYTON v. METROPOLITAN LIFE INSURANCE COMPANY, 148 So. 721 (La. Court of Appeals); STATE EX REL KERNS v. CONNECTICUT GENERAL LIFE INSURANCE CO. (S. C.), 167 S. E. 833; JOINER v. METROPOLITAN LIFE INSURANCE CO. (Ga.), 151 S. E. 540.

POINT FIVE

Petitioner's rights were fixed and controlled by the group contract issued and delivered in Pennsylvania and not by the certificate, which merely evidenced his rights under the Pennsylvania contract.

ALL STATES LIFE INSURANCE CO. v. TILLMAN, 226 Ala. 245, 146 So. 393; MCBRIDE, ET AL., v. CONNECTICUT GENERAL LIFE INSURANCE CO., 14 Fed. Sup. 240; WANN v. METROPOLITAN LIFE INSURANCE CO., 41 S. W. (2d) 50 (Tex. Com. App.); METROPOLITAN LIFE INSURANCE CO. v. GREENE, 75 S. W. (2d) 703; EISEN v. JOHN HANCOCK LIFE INSURANCE COMPANY, 91 S. W. (2d) 81 (Mo.); HARDIE v. METROPOLITAN LIFE INSURANCE COMPANY, 7 S. W. (2d) 746 (Mo.); GALLAGHER v. SIMMONS HARDWARE CO., 258 S. W. 16 (Mo.); THULL v. EQUITABLE LIFE ASSURANCE SOCIETY, 40 Ohio 406, 178 N. E. 850.

POINT SIX

Employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary and/or affiliated companies, located in the various States of the Union, and in foreign countries, being insured under group contract G5039R, a Pennsylvania contract, the application of the law of Pennsylvania to the rights of each under said contract gives a unified standard of duty and obligation, rather than uncertainty and confusion which would result from applying the laws of the various States of

the Union, and foreign countries, depending upon perchance where the employee might be located when his insurance under the policy became effective, and where his beneficiary might be located.

SUPREME COUNCIL OF ROYAL ARCAMUN v. GREEN, 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089; L. R. A. 1916A 771; WOODMAN v. MIXER, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, 41 A. L. R. 1384; COMMERCIAL MEN'S ASSOCIATION v. BENN, 261 U. S. 140, 43 Sup. Ct. 293, 67 L. Ed. 573.

POINT SEVEN

The question here involved is one for determination by the Federal courts, in which determination they are not controlled by decisions of the local State courts.

MUTUAL LIFE INSURANCE COMPANY v. JOHNSON, 293 U. S. 353, 55 S. Ct. 154, 79 L. Ed. 398; WASHBURN & MEON MANUFACTURING CO. v. INSURANCE CO., 179 U. S. 1, 21 S. Ct. 1, 45 L. Ed. 49; SWIFT v. TYSON, 16 Peters 1, 10 L. Ed. 865; CARPENTER v. PROVIDENCE-WASHINGTON INSURANCE CO., 16 Peters 495, 10 L. Ed. 1064.

Remarks

No law other than that of the State of Pennsylvania, with whose statutes the parties in all respects complied, was involved, entered into, or had any connection, with the making of group contract G5039R. It was specifically agreed that the law of that Commonwealth would control such contract. Respondent did not at any time prior to or after the issuance of such group contract invade Texas with reference thereto. The rights taken by petitioner under such group contract were secured by him with full notice that they were governed by and arose from a contract theretofore delivered in the Commonwealth of Pennsylvania and subject to the laws of that Commonwealth. Such group contract was complete in itself.

By applying the law of Pennsylvania the rights of the various parties interested in said contract, and their obligations thereunder, are determined by one collective and unified standard of duty and obligation, and therefore stabilized. To apply the laws, or to attempt to apply the laws, of the various States of the Union and foreign countries to the rights of employees insured thereunder, depending perchance upon the location of the particular employees when they became insured under such group contract, would give rise to nothing but uncertainty and confusion. It is impossible to draft any contract which will comply with the laws of all States and foreign countries. It would be most unfortunate if the benefits of group insurance had to be denied to employees because of this situation. The decision of the Circuit Court of Appeals of the United States for the Fifth Circuit, after full consideration, is correct and should not be disturbed by this Honorable Court.

WHEREFORE, respondent respectfully prays that the application be denied.

Respectfully submitted,

MAJOR T. BELL,
Attorney for Respondent.

B. M. ANDERSON,
Hartford, Connecticut;
ORGAIN, CARROLL & BELL,
DUFF & CECIL,
Beaumont, Texas,
Of Counsel.

Appendix A

PURDON'S PENNSYLVANIA STATUTES, ANNOTATED, Title 40, Section 532.

"*Standard Provision for Policies of Group Life Insurance.* No policy of group insurance shall be issued or delivered in this Commonwealth unless and until a copy of the form thereof has been filed with the Insurance Commissioner and formally approved by him nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

"(a) - - - - -

"(b) A provision that the policy, the application of the employer, the individual applications, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer or by the individual employees, shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used as a defense to claims under the policy, unless it is contained in a written application.

"(c) - - - - -

"(d) A provision that the company will issue to the employer for delivery to the employee whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provisions to the effect that in case of the termination of the employment for any reason whatsoever, the employee shall be entitled to have issued to him by the company, without further evidence of the insurability, and upon application made to the company within 31 days after such termination, and upon the payment of the premium applicable to the class or risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company, except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination.

"(e) - - - - -

"Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this Commonwealth."

IN THE

Supreme Court of the United States.

MAR 4 1937
CHARLES ELMORE CRO
CLE

OCTOBER TERM, 1936. No. 531.

JOHN BOSEMAN, *Petitioner,*

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, *Respondent.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

A typical "group" life insurance policy (covering thousands of employees in many States) can not be governed by the varied, and frequently conflicting, laws of the States in which the shifting employees may happen to live from time to time. (Royal Arcanum v. Green, 237 U. S. 531, 542; Modern Woodmen v. Mixer, 267 U. S. 544, 551.)

The policy should be governed by the laws of Pennsylvania, where the policy was delivered, from which State all transactions were carried on by mail between the Home Offices of the Employer in Pennsylvania, and the Insurance Company in Connecticut, and which both parties agreed should govern the contract. (Aetna Life v. Dunken, 266 U. S. 389, 399; Hartford Ind. Co. v. Delta Co., 292 U. S. 143, 149.)

The fact that a Texas employee of a subsidiary company authorized the subsidiary to make "proper" deductions from his wages so as to secure inclusion among the "certain employees" insured, and the subsidiary's remittance of such deductions to the Employer [parent company] in Pennsylvania (and other acts between the employee and the subsidiary) do not make the laws of Texas applicable to the policy (Id.).

This case does not involve a State's power to tax, or the question of "doing business"; and Palmetto Ins. Co. v. Conn., 272 U. S. 295 is not applicable.

B. M. ANDERSON
MAJOR T. BELL
WM. MARSHALL BULLITT
Counsel for Respondent.

INDEX

	PAGE
Question Involved	1
Relevant Statutes	2
Nature of Group Insurance	2
Statement of the Case	3
(1) Boseman's employment. Negotiations for a "group" policy in Pennsylvania	3
(2) Policy G-5039-R (provisions summarized).	3–5
(3) Premium payments; payroll deductions; and individual certificates	5–6
(4) Boseman's discharge; his failure to give required notice of disability. Suit, judgment, and reversal by C. C. A.	6–13
(5) Summary of Connecticut General and Gulf Oil acts in Connecticut and Pennsylvania.	13–16
Summary of Points Discussed	16
FIRST POINT: Policy G-5039-R is the only contract of insurance upon which Boseman can rely, and by which alone his rights must be determined. Certificate R-23558 is not a part of that insurance contract. Under the laws of Pennsylvania, Boseman cannot recover on Policy G-5039-R	17–19
(1) Policy G-5039-R is the sole contract involved. The individual certificate is not part of the contract of insurance	17–18
(2) Boseman did not give the required notice of his disability. Recovery on the policy is barred by its terms under the laws of Pennsylvania	18–19

PAGE

SECOND POINT: Policy G-5039-R is a Pennsylvania contract; and it is governed by the laws of Pennsylvania 19–43

(1) Summary of the acts done 23–25

(2) G-5039-R cannot simultaneously be a Texas contract in Texas, a Pennsylvania contract in Pennsylvania; a South African contract in South Africa, etc., according to *residences* of employees 25–27

(3) It is a Pennsylvania contract, because that is the place of substantial performance, and it was so agreed by the parties... 28

(4) Boseman cannot—as beneficiary only—seek the benefits of a contract, and simultaneously repudiate a material provision, without which it would not have been made.. 29

(5) Review of authorities 29

Allgeyer v. *Louisiana*, 165 U. S. 578 29
Minnesota Assn. v. *Benn*, 261 U. S. 140... 30
Aetna Life Ins. Co. v. *Dunken*, 266 U. S. 389 31
Hartford Ind. Co. v. *Delta*, 292 U. S. 143.. 34
Home Ins. Co. v. *Dick*, 281 U. S. 397..... 37
Palmetto Ins. Co. v. *Conn*, 272 U. S. 295 (distinguished) 38

Conclusion 43

Appendix 44

LIST OF AUTHORITIES

PAGE

Aetna Life Ins. Co. v. *Dunken*, 266 U. S. 389.....31, 33, 38
Aetna Life Ins. Co. v. *Moore*, 231 U. S. 543..... 19
Alaska Packers Assn. v. *Comm'n.*, 294 U. S. 532..... 39
Allan v. *Moline Plow Co., Inc.*, 14 F. (2d) 912..... 28
Allgeyer v. *Louisiana*, 165 U. S. 578..... 29
All States Life Ins. Co. v. *Tillman*, 226 Ala. 245..... 17
American Surety Co. v. *Bankers Savings Co.*, 67 F. (2d) 803 19
Austin v. *Metropolitan Life*, 142 So. 337..... 17
Barnes v. *Aetna Life*, 7 S. W. (2d) 946..... 23
Bradford Elec. Co. v. *Clapper*, 286 U. S. 145..... 37
City v. *Lamson*, 9 Wall. 477..... 28
Clark v. *Gibbs*, 69 F. (2d) 264..... 26
Compania De Tobacos v. *Collector*, 275 U. S. 87....38, 41, 42
Conn. General Life v. *Boseman*, 84 F. (2d) 701..... 2
Conn. General Life v. *Speer*, 185 Ark. 615..... 2, 23
Coughlin v. *S. C. Ry. Co.*, 142 U. S. 101..... 26
Davis v. *Metropolitan Life*, 32 S. W. (2d) 1034..... 28
Dewease v. *Travelers Ins. Co.*, 208 N. C. 732..... 23
Donnelly v. *Metropolitan Life*, 113 Pa. Sup. Ct. 583.... 19
Duval v. *Metropolitan Life*, 82 N. H. 543.....2, 17, 23
Eisen v. *John Hancock Life*, 91 S. W. (2d) 81..... 17
Equitable Life v. *Clements*, 140 U. S. 226..... 22
Equitable Life v. *Hall*, 253 Ky. 450..... 23, 28
Equitable Life v. *Pennsylvania*, 238 U. S. 143.....38, 41, 42
Gallagher v. *Simmons Hardware Co.*, 214 Mo. App. 111 17
Hardie v. *Metropolitan Life*, 7 S. W. (2d) 746..... 17
Hartford Ind. Co. v. *Delta Co.*, 292 U. S. 143.....34-36, 38
Home Bldg. & Loan Assn. v. *New Amsterdam Cas. Co.*, 45 F. (2d) 989..... 19
Home Ins. Co. v. *Dick*, 281 U. S. 397.....19, 29, 37, 38, 39
Home Mortgage Co. v. *Ramsey*, 49 F. (2d) 738..... 28
Imperial Fire Ins. Co. v. *Coos County*, 151 U. S. 452. 19
Ins. Assn. v. *Evans*, 102 Pa. 281..... 19
John Hancock Mutual Life v. *Yates*, —— U. S. —— (Dec. 7, 1936)..... 42
Joiner v. *Metropolitan Life*, 40 Ga. App. 750..... 23

PAGE

Kingsland v. *Missouri State Life*, 66 S. W. (2d) 959.. 28
Leach v. *Metropolitan Life*, 124 Kan. 584..... 23
Magee v. *Equitable Life*, 62 N. D. 614..... 28
Masino v. *Farmers & Mechanics Mutual*, 235 Pa. 419. 19
McBride v. *Conn. General Life*, 14 F. Supp. 240..... 17
Minnesota Assn. v. *Benn*, 261 U. S. 140.....26, 30, 38
Modern Woodmen v. *Mixer*, 267 U. S. 544..... 24, 26
Mutual Benefit Health Assn. v. *Baldridge*, 70 F. (2d) 236 26
Mutual Life Ins. Co. v. *Hill*, 193 U. S. 551..... 26
Mutual Life Ins. Co. v. *Johnson*, 293 U. S. 335..... 22, 26
Mutual Life Ins. Co. v. *Liebing*, 259 U. S. 209..... 22
Odegard v. *General Cas. & Surety Co.*, 44 F. (2d) 31. 19
Palmetto Fire Ins. Co. v. *Conn*, 272 U. S. 295.....13, 38-41
Peyton v. *Metropolitan Life*, 148 So. 721..... 23
Pritchard v. *Norton*, 106 U. S. 124..... 26
Provident Life Ins. Co. v. *Nicholson*, 157 Va. 345.... 17
Provident Savings Assn. v. *Kentucky*, 239 U. S. 103.. 37
Royal Arcanum v. *Green*, 237 U. S. 531..... 26
St. Louis Architectural Iron Co. v. *New Amsterdam Cas. Co.*, 40 F. (2d) 344..... 19
St. Louis Compress Co. v. *Arkansas*, 260 U. S. 346... 37
Seavers v. *Metropolitan Life*, 132 Misc. 719..... 17
Seeman v. *Philadelphia Warehouse Co.*, 274 U. S. 403. 26
State v. *Conn. General Life*, 168 S. C. 516..... 23
Steffen v. *Equitable Life*, 64 S. W. (2d) 302..... 17
Swift v. *Tyson*, 16 Pet. 1..... 26
Thompson v. *Pacific Mills*, 141 S. C. 303..... 28
Thull v. *Equitable Life*, 40 Ohio App. 486..... 17
Wann v. *Metropolitan Life*, 41 S. W. (2d) 50..... 17
Western Union v. *Scarborough*, 68 S. W. (2d) 1027.. 28

Beale's Conflict of Laws, Vol. 2, p. 1091, § 3324..... 22
Story's Conflict of Laws, §§ 242-244, 261, 263..... 22

STATUTES

Purdon's Pennsylvania Stats. Ann., Title 40, § 532..2, 7, 8, 20
Texas' Revised Civil Stats., Arts. 4736, 4764a, 5054, 5056, 5545, 5546.....2, 29, 31

[References Required by Rules 12 and 27.]

OPINION BELOW: *Connecticut General Life* v. *Boseman*, 84 F. (2d) 701.

JURISDICTIONAL AUTHORITY: Judicial Code, § 240(a), as amended by Act of February 13, 1925.

STATUTES INVOLVED: Purdon's Penn. Stat. Ann. Title 40, Sec. 532; Rev. Civ. Stat. Texas, Art. 5546.

DATE OF JUDGMENT, ETC.: Dec. 26, 1935 (R. 47-50).

NATURE OF THE CASE, RULINGS, ETC.: Boseman did not notify the insurance company of his disability within the 60 days required by a "group" policy (R. 43),—which requirement was *valid* under the laws of *Pennsylvania*, but void under the laws of Texas (R. 43-44).

The District Court held that the policy was a *Texas* contract; and that the limitation was void (R. 43-44).

The C. C. A. (5th) *reversed* the District Court, and held that the policy was a *Pennsylvania* contract, and that the failure to give the required notice barred recovery (R. 240, 241).

Certiorari was granted December 21, 1936 (R. 254).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936—No. 531

JOHN BOSEMAN,

Petitioner,

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,

Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

BRIEF FOR THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY

The sole question involved is whether Pennsylvania law or Texas law applies to a "group" insurance Policy G-5039-R, which provides that no claim for total permanent disability shall be paid unless notice of "such disability" be given during the insured's employment, **"or within 60 days thereafter"**—a time limitation that is valid in Pennsylvania but void in Texas (R. 196-7, 234-5).

The answer depends upon whether the Connecticut General made a Texas contract (or otherwise subjected itself to the Texas laws) so that Texas laws (instead of Pennsylvania laws) apply to the policy.*

* All acts of the contracting parties were done in *Pennsylvania* and *Connecticut;* and the policy itself expressly provides (R. 85):

"This contract is issued and delivered in the City of Pittsburgh, in the Commonwealth of Pennsylvania and is governed by the laws of that Commonwealth."

RELEVANT STATUTES

The relevant statutes are in the Appendix, p. 44 *infra.*

1. TEXAS' REVISED CIVIL STATUTES, Art. 5546, very similar to Art. 5545 involved in *Home Ins. Co.* v. *Dick,* 281 U. S. 397; Art. 4736, 5054 (formerly Arts. 4746, 4950 involved in *Aetna Life Ins. Co.* v. *Dunken,* 266 U. S. 389); Art. 5056; Art. 4764a.

2. PURDON'S PENNSYLVANIA STATUTES ANN., Title 40, Section 532.

Nature of "group" insurance*

"Group" insurance is a form of modern paternalistic insurance, by which an Insurance Company issues a "group" policy to a railroad, industrial or other large employer of labor, insuring all (or certain classes) of the Employer's employees against death (and in some cases against various forms of disability) for which the Employer pays to the Insurance Company a premium, the aggregate amount of which is determined by the *ages* of the employees and the *amounts* of insurance in force (which amounts, in turn, are generally determined by a sliding scale, depending upon the employee's salary and length of service).

Sometimes the Employer bears the entire cost of the insurance, in which event it is called "*non*-contributory" group insurance; or in other cases, the Employer requires his employees (as a condition of being included in the list of employees so insured) to pay to him certain sums (based upon a private scale agreed upon with the Employer), which go to recoup the Employer in part for

* See *Duval* v. *Metropolitan Life Ins. Co.,* 82 N. H. 543; *Conn. General Life Ins. Co.* v. *Speer,* 185 Ark. 615, 616-618; *Boseman's* Case, C. C. A. (5th), R. 238.

the premium he has paid to the Insurance Company—in which cases it is called "contributory" group insurance; and whatever the employee pays to his Employer is commonly called his "contribution".

The Insurance Company assumes and treats as insured under its policy all those employees which the Employer, from time to time, designates.

STATEMENT OF THE CASE

1. In 1916, Boseman began to work at Port Arthur, Texas, for the Gulf Refining Co. (hereafter called the Refining Co.)—a subsidiary of a *Pennsylvania corporation, i. e.*, Gulf Oil Corporation (hereafter called Gulf Oil); and Boseman continued so to work in Texas for sixteen years until his discharge on October 8, 1932 (R. 92, 101-109, 162).*

2. In early March, 1932, Gulf Oil and Connecticut General began (and completed) negotiations solely in *Pennsylvania*, for (*a*) cancelling on March 31 (midnight) the two existing "group" policies; and, in lieu thereof, (*b*) issuing in *Pennsylvania* a new "group" Policy G-5039-R effective April 1, 1932, at 12:01 A. M. (R. 136-7).

---

* Boseman had previously become insured under two earlier "group" policies (dated G-5039 in 1918 and G-5545 in 1925), which had been negotiated for, executed and delivered solely in Pennsylvania and Connecticut (R. 128-135, 145-148). Their terms are neither shown in the Record nor are they material here, as both were cancelled on March 31, 1932 (R. 99, 127-129, 135-6, 146-8).

They are now mentioned only because they are referred to in the subsequent Policy G-5039-R (and in the certificate R-23558 issued thereunder) on which policy the present suit is based (R. 51, 53, 67, 72, 77).

On March 7, Boseman signed and delivered to Refining Co., at Port Arthur, Texas, a "payroll deduction order"* (so called in the Policy and in the Record), by which Boseman agreed that his then existing insurance protection under the two old policies should be cancelled as of March 31; contingently released any claim thereunder as of March 31; applied for "group" insurance as of April 1, in the amount (dependent on salary and length of service) provided for in the proposed new "group" Policy G-5039-R; and, for the future, he authorized the Gulf Oil and/or the Refining Co.,

> "*to deduct* in advance the proper amount per month from my pay to apply toward the premium of said [new] insurance" (R. 99-100, 107).

Boseman thus "ratified" in advance what the Gulf Oil was proposing to do.

Connecticut General had nothing** whatever to do with that "payroll deduction order" which Boseman thus ex-

---

* Apparently in anticipation of the proposed plan, and in order to establish his "eligibility" thereunder, so as to secure at the earliest moment the benefit of the expected new policy, and thus avoid any "break" in the continuity of his insurance protection. He had executed a similar "payroll deduction order" in connection with his prior insurance in 1929 (R. 99).

** Subsequently, G-5039-R did permissively provide that the "certain employees" insured thereunder would automatically include any employee who evidenced his "election of insurance" "by completing any form of payroll deduction order approved by the Employer"—which Boseman had already done in advance (R. 73, 99-100, 107). Boseman's Petition for *Certiorari* (which is the only Brief Boseman has filed in this Court) is quite erroneous in its assertion (pp. 11, 18) that Connecticut General required Boseman to execute a release, etc., or to do anything else.

Connecticut General never *required* Boseman to do anything, nor *prescribed* any conditions precedent.

It permissively agreed that all employees should be considered as among the "certain employees" insured, "by completing *any form* of payroll deduction order approved by the Employer" (R. 73)—which is a very different thing from Boseman's assertion that Connecticut General *required* Boseman to release it or to do anything else. Of course, Connecticut General had to be notified by Gulf Oil of the names of the persons insured, but that was a requirement specifically imposed on Gulf Oil (R. 81), and not required by Connecticut General of Boseman or any other employee.

ecuted and delivered to Refining Co. in Texas, even *before* Connecticut General had received *in Pennsylvania* Gulf Oil's application for the issuance of a new policy (R. 157; Cf. R. 100-1, 107, 119, 124, 131-2). The "payroll deduction order" was a purely private arrangement between Refining Co. (and perhaps Gulf Oil, R. 100) and Boseman, by which method alone could Boseman qualify (*a*) to become one of the favored "certain employees" insured under the anticipated G-5039-**R** and (*b*) to be so designated by Gulf Oil (R. 67, 81). This "payroll deduction order" never belonged to, was never in the possession of, and never was delivered to, Connecticut General; but it always remained in the possession of, and as a part of the permanent corporate records of, the Refining Co. (R. 98, 100).*

3. On March 15, Gulf Oil signed and delivered to Connecticut General *in Pennsylvania* a written application (1) to cancel the two former policies G-5039 and G-5545 as of March 31; (2) to issue in lieu thereof a new policy G-5039-**R** effective April 1, insuring only those employees who had complied with its terms; and (3) that the new policy G-5039-**R** be issued in Pennsylvania and governed by its laws (R. 86, 135-138).

---

* The C. C. A. thus aptly described the effect of Boseman's execution of the "pay-roll deduction order" (R. 238-9):

"The insurance as to any employe is perfect so soon as eligibility and his election concur, the policy being in force. Notice to the insurer is not a prerequisite, though it is to be given in due course. Boseman was eligible from the beginning, and elected to take the insurance *before the policy was issued by signing in advance the necessary pay deduction order to his employer*. His insurance waited only on the issuance of the policy and became effective instantly after and because of that act.

On March 15, Connecticut General accepted, *in Pennsylvania*, Gulf Oil's application for a cancellation of the old policies, and for the issuance of a new policy G-5039-R as of midnight March 31-April 1, 1932 (R. 86, 99-100, 129, 136-7, 146-7).

Connecticut General then signed *in Connecticut* the new "group" policy G-5039-R, dated April 1, 1932, "for a term of one year from April 1, 1932, 12:01 A. M. Standard Time at Pittsburgh"; and delivered it *in Pennsylvania* to Gulf Oil (R. 137).

On March 31 (midnight), the two old policies lapsed and were cancelled; all future liability thereunder ceased; and by the terms of his "payroll deduction order" Boseman had accepted, in advance as of March 31 (*a*) such cancellation of his former insurance protection thereunder, and, in lieu thereof, (*b*) future insurance protection under the new policy G-5039-R (R. 86, 99-100, 129, 136-7, 146-7).

On April 1, at 12:01 A. M., the new "group" policy G-5039-R went into effect (R. 67, 91, 123, 137-8).

4. All negotiations and every act done by the Gulf Oil or by the Connecticut General took place *solely in Pennsylvania or Connecticut* (R. 137-8); and the new policy G-5030-R expressly provided (in accordance with the Gulf Oil's request in its application) that it should be governed by the laws of Pennsylvania (R. 85-86, p. 1, note *supra*).

Policy G-5039-R

5. Policy G-5039-R provided (R. 67-86):

I. Gulf Oil pays to Connecticut General a monthly premium in advance, based on the respective ages of the employees insured and on the amounts of their insurance (R. 78, 80).

II. Connecticut General "insures certain employees" of Gulf Oil and its subsidiaries against death, and against permanent total disability before age 60, for an "amount of insurance" on a sliding scale, dependent upon the employee's (*a*) years of service and (*b*) amount of salary (R. 67-72, 74-5), subject to specified rules of eligibility (R. 72-73)*—but without any limitation as to the *geographical location* of such employees, who were scattered throughout the various States and foreign countries (R. 134-5, 142).

III. "**Election of insurance.** An employee may elect insurance under this policy by completing *any form of payroll deduction order approved by the Employer*" (R. 73).

"**Employees insured.** Each employee electing the Insurance *before** becoming eligible, *will be insured automatically on the day he becomes eligible*" (Id.).

IV. "**Individual certificate.**** The Company *will issue to the Employer* for each insured employee an individual certificate. **This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled,** to whom payable, and the following conversion privilege" [a privilege immaterial here] (R. 84).

V. Each month, or within a reasonable time thereafter, Gulf Oil must notify Connecticut General of the termination

---

* "*Before* becoming eligible" under G-5039-R, Boseman had, on March 7, elected insurance thereunder by executing the advance form of "payroll deduction order" approved and presented to him by the Refining Co. (p. 4, *supra;* R. 73). By the express terms of G-5039-R, any employee "electing the insurance *before* becoming eligible, will be insured automatically *on the day he becomes eligible*" (R. 73), to-wit: in Boseman's case, April 1, 1932, because he then *became* "eligible" under SCHEDULE B, G-5039-R, because he was (1) "insured under Policy G-5545 on March 31, 1932", and (2) an "employee in service April 1, 1932" (R. 72, 98-99, 101, 147-8, 161-3).

** The Pennsylvania Law required such a clause to be inserted in every "group" life policy (Purdon's Penn. Stat. Ann. Title 40, Section 532. See Appendix, p. 47 *infra*).

of employment of any insured employee; and upon such notice being given, the *insurance terminates* as of the date that the *employment* terminated (R. 81).

VI. The clause entitled **"Incontestability"** expressly provided that no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of his employment, *unless* such employee gave written notice to the Company *during said period of employment "or within 60 days thereafter"* (R. 85).

VII. This contract is issued and delivered in Pennsylvania, and is governed by the laws of Pennsylvania (R. 85).

In strict compliance with Pennsylvania's "standard provision" law (Appendix, p. 47, *infra*), (*a*) Policy G-5039-R embodied the above provision for "Individual certificate" (R. 84); and (*b*) a copy of Gulf Oil's application was attached to and made a part of the policy (R. 85-86). As no employee made any individual application to Connecticut General, the "standard provision" regarding "the individual applications, *if any*, of the employees insured" did not apply to G-5039-R.

On April 1, 1932, at 12:01 A. M., Boseman, *eo instanti*, thus became "insured automatically" * for $4,000† under G-5039-R. This insurance would continue in force (*a*) so long as Gulf Oil paid the monthly premiums ("Renewal" R. 78; "Grace" R. 79), and (*b*) until Boseman's employment terminated or he cancelled his insurance (R. 81-82) —regardless of whether anything was, or was not, deducted from Boseman's wages [C. C. A. (5th) so held

---

* See pp. 4, 5, note, *supra*.

† $4,000 was the automatic result under SCHEDULE B, of (*a*) Boseman's salary being "less than $150 per month", (*b*) his completed years of continuous service" being *more* than seven years (*i. e.* sixteen years); (R. 14, 75, 147, 148, 150).

In the event of Boseman's total permanent disability before age 60, Connecticut General agreed to pay him the full $4,000 insurance (Cf. "Benefits", R. 70-71).

R. 240-1]. As a third-party-beneficiary of Gulf Oil's contract with Connecticut General, the existence of Boseman's insurance did not depend upon either (1) future deductions from his wages, or (2) his receipt of an individual certificate, as Connecticut General's obligation to Boseman was *already complete* upon the delivery in Pennsylvania of G-5039-R because it had *insured the "group"*, to which "group" of "certain employees" Boseman's March 2 private agreement with Refining Co. "automatically" admitted him on April 1 (R. 73; pp. 4, 5, note, *supra*).

Employees of Gulf Oil (and of its subsidiaries) located all over the United States and in foreign countries (constantly being transferred from one State or foreign country to another State or country), were similarly insured (R. 134-5, 142).

6. Shortly after April 1, Gulf Oil, from its Home Office *in Pennsylvania*, notified Connecticut General, at its Home Office *in Connecticut*, that, among other employees, Boseman had, on April 1, become insured for $4,000 under G-5039-R (R. 150).

On April 15, Gulf Oil *mailed its own check* from its Home Office *in Pennsylvania* to Connecticut General's Home Office *in Connecticut*, in advance payment of the entire first (April) monthly premium upon policy G-5039-R, and upon all the insurance thereunder (including $3 for Boseman's insurance; R. 124); and it similarly mailed its own checks on the first of each month thereafter in advance payment, as required by the policy, of such monthly premiums due from May to December, both inclusive (R. 92, 124, 138-9, 146, 149, 150).

On May 1, or thereabouts, Connecticut General issued, *in Connecticut*, and delivered to Gulf Oil, *in Pennsylvania*,

Certificate R-23558 evidencing Boseman's $4,000 insurance as specifically required by G-5039-R (R. 51-61, 118-9, 139, 150-1). The certificate recited that

> "subject to the terms and conditions of said policy numbered G-5039-R executed and delivered in the Commonwealth of Pennsylvania"

Connecticut General certified that Boseman was insured under Schedule B for $4000 (R. 52). Subsequently, Gulf Oil sent such Certificate R-23558 to the Refining Co., which, in turn, delivered the certificate to Boseman at Port Arthur, Texas (R. 96, 97, 101, 106, 107, 112). Boseman offered this certificate R-23558 in evidence for the *sole purpose* of *"identifying"* Boseman "as one of the insured under group policy G-5039-R"; and it is not in evidence as the contract sued on (R. 51).

Refining Co. deducted (in Texas) $2.40 a month from Boseman's pay during the months April-October, both inclusive, aggregating $16.80 (R. 101, 107, 109, 112). Refining Co. sent Boseman's $2.40 monthly deductions [totaling $16.80], together with a large number of other deductions from other employees' pay, to Gulf Oil in Pennsylvania (R. 91, 97-98), whereby Gulf Oil partially recouped itself for the monthly premium payments which it had *previously made* to Connecticut General.

In Boseman's case, Gulf Oil thereby bore 20% (60¢ per month) of the cost of Boseman's insurance—Boseman bearing the remaining 80% of the cost ($2.40 per month) (R. 92, 109, 124). This again was a matter of purely internal arrangement between Gulf Oil, Refining Co. and the latter's employee Boseman, with which Connecticut General had absolutely no connection.

7. Prior to October 8, 1932, Boseman became "permanently and totally disabled" from syphillis, diabetes, etc. (R. 89, 90, 109, 112, 114, 115).*

On October 8, 1932, Boseman was discharged; his employment terminated (R. 104, 107); and his insurance was thereupon automatically "cancelled** upon termination of employment" (R. 81).

Boseman became then [October 8, 1932] entitled immediately to recover his full $4,000 insurance (R. 70, 71; p. 8, note, *supra*), *provided* he gave written notice of his disability to Connecticut General within 60 days after October 8, to-wit: by December 8, 1932, as expressly required by the following "Incontestability" clause of

---

* Connecticut General disputed the disability (R. 159-165); but the jury's verdict for the plaintiff has foreclosed that question of fact, and Boseman's "permanent total disability" prior to October 8, 1932, must be here considered as established.

** As Refining Co. had deducted $2.40 from Boseman's October pay, he requested and Refining Co. paid him at the time of his discharge, $1.84 refund of the unearned premium, which was the exact proportion of the $2.40 of the unexpired time from October 8 to October 31 (R. 81, 102, 105).

On October 1, November 1, and December 1, 1932 Gulf Oil continued to send its check, from Pennsylvania, to Connecticut General, in Connecticut, in advance payment of the monthly premium for those months for policy G-5039-R (including $3 per month for Boseman's insurance) (R. 124, 152).

On December 22, Gulf Oil mailed, from Pennsylvania, to Connecticut General, in Connecticut, a notice that Boseman's employment had terminated, and that his $4,000 insurance had ended, on October 8 (R. 151-2, 155-6).

On December 27, upon receipt of such notice, Connecticut General marked on its records the cancellation of Boseman's insurance under G-5039-R (as evidenced by Certificate R-23558) as of October 8, 1932 (R. 152, 159).

On December 31, 1932, Connecticut General refunded to Gulf Oil the $9 premium over-payment ($3 per month for October, November and December) by crediting Gulf Oil with $9 (R. 124, 138, 141, 152-154).

G-5039-R (of which Boseman had actual knowledge by its *verbatim* inclusion in his Certificate R-23558, evidencing the terms of the insurance to which he was entitled, R. 58-9):

> "**Incontestability** * * * and no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment *unless* such employee gave written notice of such disability to the Company [Connecticut General] *during the said period of employment or within 60 days thereafter*" (R. 84-85).

Boseman did not notify Connecticut General of his alleged disability by December 8, 1932 (nor indeed for *seventeen months* thereafter); **and consequently his claim became barred on December 8, 1932.***

---

* Boseman's long delay was not due to any fault of Connecticut General, for although his Proof of Loss is dated April 25, 1933 (R. 62-3)—more than *six months* after his discharge—he did not even present it to Connecticut General until March 7, 1934—*seventeen months* after his discharge (R. 63-4, 66, 122).

Indeed, it was not until May 22, 1933—*more than seven months* after Boseman's discharge—that Connecticut General first received (and then only indirectly) a copy of a letter dated April 12, 1933, from Boseman's attorney to Refining Co., requesting a form on which to present a disability claim, which form Refining Co. had immediately furnished (R. 65, 95, 112, 113, 123)—so that Boseman's claim had been long barred before either Refining Co. or Connecticut General had the slightest intimation that Boseman even had a disability claim.

Connecticut General required the 60-day limitation clause in order (1) to ascertain promptly the date disability began, and (2) to adjust its annual premium rate on the basis of its actual disability "experience" ("**Premium Rates**", R. 79). Although Boseman was disabled before October 8, 1932, nevertheless when, six months later, Connecticut General fixed its premium rates for a renewal of G-5039-R on April 1, 1933, it knew nothing of Boseman's alleged disability, and could not take his $4,000 claim [for which it had received only $18 premium] into consideration in fixing its rates for the next policy year.

8. On May 6, 1934, Boseman sued Connecticut General for $5,480 ($4,000 insurance, 12% penalty of $480, and $1,000 attorney's fee, R. 49). The District Court held that G-5039-R was a Texas contract, and that the 60 day limitation while valid in Pennsylvania was *void* in Texas (R. 49, 196-197); and it sustained a jury's $5,480 verdict for Boseman, without charging the jury on the subject of the 60 day notice clause, or whether it was a Texas or Pennsylvania contract.*

9. The Circuit Court of Appeals (5th) *reversed* the judgment. It held that Pennsylvania law controlled; and that Boseman's failure to give written notice of his disability within 60 days after his discharge barred his recovery (R. 240-241).

Certiorari was granted presumably on account of an alleged conflict between that decision of the Circuit Court of Appeals (5th) and *Palmetto Fire Insurance Co.* v. *Conn*, 272 U. S. 295.

Summary of Connecticut General and Gulf Oil acts in Connecticut and Pennsylvania.

Connecticut General. Although Connecticut General was authorized to do an insurance business in Texas (R. 88), it has never, since 1917, been qualified to write insurance in Texas, as it had no licensed agents there; has declined all applications for insurance from Texas, and has never written or delivered any policy in Texas (R. 143).

---

* It is needless to review the lengthy motions, exceptions, etc., by which Connecticut General raised and preserved the question of Pennsylvania law (R. 166-201).

Connecticut General signed G-5039-R in *Connecticut;* and delivered it to Gulf Oil in *Pennsylvania* (R. 137).

Connecticut General did not issue any certificates to employees; but it mailed the certificates from *Connecticut* to Gulf Oil in *Pennsylvania* (R. 118, 126-7, 131, 139, 150).

Connecticut General treated all insurance (of the "certain employees" insured under G-5039-R) as effective or terminated, solely according to the names, dates and amounts given it *in Connecticut* by notices mailed by Gulf Oil *from Pennsylvania* (R. 141).

Connecticut General paid all insurance claims to the beneficiaries by sending (*from Connecticut* to the Gulf Oil, *in Pennsylvania*) the Connecticut General's own checks payable to the beneficiaries (R. 90, 126, 132, 139).

Connecticut General dealt only with Gulf Oil in *Pennsylvania;* and it never dealt with any of Gulf Oil's subsidiaries or affiliated Companies, nor with any of the employees of either Gulf Oil or any of its subsidiary or affiliated companies; and it refused to accept any claims presented directly to it by any employee (R. 131, 135, 138, 142, 144).

Connecticut General never authorized or requested either Gulf Oil or Refining Co. to act for it in any way (R. 132-3, 140-148); did not concern itself with whether or not Gulf Oil took a "payroll deduction order", nor did it make any inquiry on those subjects, but it entered the employee as insured in accordance with notices received from Gulf Oil (R. 157).

Connecticut General exercised no control or direction over Gulf Oil's method of handling the certificates or the sources or persons from whom Gulf Oil or its subsid-

iaries got the funds with which either to pay the premiums, or to recoup payments which Gulf Oil had already made (R. 133, 138, 140).

Gulf Oil. Gulf Oil applied for, negotiated for, and accepted delivery of, G-5039-R *in Pennsylvania* alone (R. 137).

Gulf Oil sent, *from Pennsylvania*, to Connecticut General, *in Connecticut*, (*a*) all notices of employees who had become insured, or whose insurance was increased or cancelled, (R. 131, 139, 150-1) and (*b*) Gulf Oil's own checks for payment in advance of the monthly premiums under G-5039-R [and received back *in Pennsylvania* from Connecticut General and refunds on account of overpayment of such premiums] (R. 138, 146, 149).

Gulf Oil voluntarily sent all certificates *from Pennsylvania* to Refining Co. in Texas, which, in turn, delivered the certificates to the employees in Texas (R. 97, 102). Gulf Oil sent all Connecticut General's checks to the Refining Co., which delivered the checks to the beneficiaries in Texas (R. 90).

Refining Co.'s acts in Texas were purely on behalf of its own employees, and **not as agent for Connecticut General, with which it had no correspondence or dealings** (R. 93, 94).

Refining Co. made the payroll deduction in Texas from those employees who had signed "payroll deduction orders", and who held certificates (R. 91-93, 97), and Refining Co. then remitted the amounts so deducted to Gulf Oil at Pittsburgh (R. 91).

Refining Co.'s transactions regarding employees' election to take insurance, deductions from the payroll, delivery of certificates to employees and delivery of checks

to beneficiaries, took place in Port Arthur, Texas, *on behalf of its own employees,* but not on behalf of Connecticut General (R. 93, 94, 102).

The C.C.A. said (R. 238);

> "The insurer [Conn. General] did not authorize the employer [Gulf Oil] or its agents [Refining Co.] to solicit Boseman in Texas to become insured. According to the evidence the employer [Gulf Oil] initiated the whole matter, obtaining from Boseman and doubtless from many other employes authority to proceed, and thereafter obtained the insurance on its own and their behalf. Even as to employes who did not consent in advance the reasonable conclusion is that the employer's [Gulf Oil] action was taken for them in anticipation of their ratification, which occurred on their signing a pay deduction order."

SUMMARY OF POINTS DISCUSSED

I. Policy G-5039-R is the only contract of insurance upon which Boseman can rely, and by which alone his rights must be determined. Certificate R-23558 is not a part of that insurance contract.

Under the laws of Pennsylvania Boseman cannot recover on Policy G-5039-R.

II. Policy G-5039-R is a Pennsylvania contract and it is governed by the laws of Pennsylvania.

FIRST POINT.

1. Policy G-5039-R is the only contract of insurance upon which Boseman can rely, and by which alone his rights must be determined. Certificate R-23558 is not a part of that insurance contract.

2. Under the laws of Pennsylvania, Boseman cannot recover on Policy G-5039-R.

1. By the very nature of "group" insurance itself, Policy G-5039-R is the measure—and the *sole* measure—of the respective rights and liabilities of the Connecticut General, Gulf Oil and the "certain employees" insured thereunder (including Boseman).

Certificate R-23558 is not a contract of insurance, nor a part of the policy, but it is merely evidentiary that Boseman *was in fact insured* under G-5039-R. This is so abundantly settled that a marginal citation of the authorities is sufficient.* The C. C. A. said (R. 238):

> "The certificate issued in this case to the insured employe [Boseman] is clearly not the contract of insurance for it

---

* *All States Life Ins. Co.* v. *Tillman*, 226 Ala. 245; *Thull* v. *Equitable Life Ass. Soc.*, 40 Ohio App. 486; *Seavers* v. *Metropolitan Life Ins. Co.*, 132 Misc. 719, 230 N. Y. Sup. 366, 370; *Austin* v. *Metropolitan Life Ins. Co.* (La. App.), 142 So. 337, 338-9; *Wann* v. *Metropolitan Life Ins. Co.* (*Texas Comm. Appeals*), 41 S. W. (2d) 50; *Duval* v. *Metropolitan Life Ins. Co.*, 82 N. H. 543; *Hardie* v. *Metropolitan Life Ins. Co.* (Mo. Appeals), 7 S. W. (2d) 746, 747; *McBride* v. *Conn. General Life Ins. Co.*, 14 Fed. Supp. 240, 241; *Gallagher* v. *Simmons Hardware Co.*, 214 Mo. App. 111; *Eisen* v. *John Hancock Life Ins. Co.* (Mo. App.), 91 S. W. (2d) 81; *Provident Life Ins. Co.* v. *Nicholson*, 157 Va. 345; *Steffen* v. *Equitable Life* (*Mo. App.*) 64 S. W. (2d) 302. The contrary view of one of the intermediate Texas Court of Civil Appeals [Beaumont] is not binding on the Federal Courts and may be disregarded.

> says so on its face. The Commission of Appeals of Texas so held of a similar one in *Wann v. Metropolitan Life Ins. Co.*, 41 S. W. (2) 50 . . . Since the certificate is not the contract nor at all necessary to the existence of the insurance (*All-State Life Ins. Co.* v. *Tillman*, 226 Ala. 245) the time and place of its delivery are unimportant to the present inquiry."

Boseman fully recognized the mere evidentiary nature of the certificate, as he offered it, and it was only admitted in evidence, for the sole and limited purpose "of identifying this man [Boseman] as one of the insured under group policy G-5039-**R**" (R. 51).

2. Boseman was discharged, and his employment terminated, on October 8, 1932 (p. 11, *supra*). He did not give to Connecticut General any notice of his disability until ***more than six months*** after his discharge (p. 12, *supra*), although Policy G-5039-**R** and Boseman's individual Certificate both expressly provided that,

> "no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment, ***unless*** such employee gave written notice of such disability to the Company during the said period of employment *or within 60 days thereafter*" (R. 85, 59).

As Boseman *incurred* his permanent total disability ***during his employment***, but did not notify Connecticut General either "during the said period of employment or within 60 days thereafter", the policy expressly provides that, under those circumstances, no claim for such disability shall be paid (R. 85).

Boseman's Petition for *Certiorari* (p. 2), the District Court and the C. C. A. conceded that the 60 day limitation

is perfectly valid under the laws of Pennsylvania (R. 43, 197, 235, 241).*

The C. C. A. held that Policy G-5039-R was a Pennsylvania contract; that the Pennsylvania laws applied; and that consequently Boseman could not recover (R. 240-241). This was in accord with the elementary principles of contract law (*Home Ins. Co.* v. *Dick*, 281 U. S. 397, 406-7, 411).

SECOND POINT.

Policy G-5039-R is a Pennsylvania contract, and it is governed by the laws of Pennsylvania.

The facts are briefly summarized in the margin.**

CONNECTICUT GENERAL delivered Policy G-5039-R *in Pennsylvania;* and thereafter it did not (either directly or

---

* This was in accord with the settled rule in Pennsylvania (*Ins. Assn.* v. *Evans*, 102 Pa. 281; *Donnelly* v. *Metropolitan Life Ins. Co.*, 113 Pa. Sup. Ct. Rep. 583; *Masino* v. *Farmers & Mechanics Mutual Ins. Co.*, 235 Pa. 419; *Imperial Fire Insurance Co.* v. *Coos County*, 151 U. S. 452; *American Surety Co.* v. *Bankers Savings & Loan Co.*, 67 Fed. (2d) 803; *Aetna Life Ins. Co.* v. *Moore*, 231 U. S. 543; *Home Building & Loan Assn.* v. *New Amsterdam Casualty Co.*, 45 Fed. (2d) 989; *St. Louis Architectural Iron Co.* v. *New Amsterdam Cas. Co.*, 40 Fed. (2d) 344; *Odegard* v. *General Casualty & Surety Co.*, 44 Fed. (2d) 31).

** 1. A Pennsylvania Co. applied *in Pennsylvania* to a Connecticut Co. for a "group" policy; the application was received and accepted *in Pennsylvania*. The policy (automatically and collectively insuring "certain employees" of the Pennsylvania Co. in *whatever State or foreign country* such employees might be located) was written up and signed *in Connecticut*, and *delivered* to the Pennsylvania Co. *in Pennsylvania* (R. 86, 129, 135-138, 146-7).

2. Each of those widely scattered employees who desired to be included as one of the "certain employees" so insured under

through any agent) do anything in connection therewith anywhere, *except in Connecticut,* where it performed all acts under the policy by receiving through the mail all checks, notices, and claims, and marking its records; and mailing, *in Connecticut,* all individual certificates and its own checks (in payment of claims) to Gulf Oil *in Pennsylvania.*

GULF OIL received initial delivery of this paternalistic "group" insurance policy *in Pennsylvania;* and thereafter all its transactions with Connecticut General were, by mail, between Pennsylvania and Connecticut, by which

---

G-5039-**R**, signed and delivered in Texas, *or in whatever State or foreign country he was then located,* a "payroll deduction order" in some form approved by the Pennsylvania Co.; and the names, etc., of the employees so signing up, were furnished to the Pennsylvania Co. *in Pennsylvania* (R. 73, 99-100, 139, 141, 150).

3. The Pennsylvania Co. paid all premiums to the Connecticut Co. *in Connecticut;* sent to the Connecticut Co. a list of names of the "certain employees" so insured, in order that the Connecticut Co., (as required both by the Pennsylvania laws Act April 26, 1929, P. L. 785; Purdon's Penn. Stat. Ann. Title 40, Sec. 532, and by Policy G-5039-**R**, issued in accordance therewith), might send (as it did send to the Pennsylvania Co. *in Pennsylvania*), an individual certificate in respect of each employee so insured, certifying that the employee named therein was insured under G-5039-**R**, (Id. R. 92, 124, 138-9, 146, 149-151, 152).

4. The Pennsylvania Co. sent those evidentiary certificates to its own several agent-subsidiaries **(but not as the agent of the Connecticut Co.)** for delivery; and they were delivered to the respective insured employees—in the case at bar to Texas, where the certificate was there delivered to Boseman (R. 93, 96-7, 101, 106-7, 112, 139).

5. Whenever an employee was discharged, voluntarily terminated his employment, whose insurance was increased or reduced, or who died or became disabled, the Pennsylvania Co

Gulf Oil, not as agent for Connecticut General but in its own interest as policy holder, or acting for convenience for the employees of itself and its subsidiaries, *mailed to Connecticut General, in Connecticut,* Gulf Oil's checks for payment in advance of the monthly premiums, the names of those employees who were to be included among the "certain employees" insured, and notices of employees' deaths, disabilities, claims, discharges and terminations of employment; *received in Pennsylvania,* by mail from Connecticut, individual certificates and the

---

mailed *from Pennsylvania,* to the Connecticut Co. *in Connecticut,* a notice of such discharge, termination, increase or reduction, death or disability; and the Connecticut Co. adopted, and marked upon its records *in Connecticut,* the appropriate fact, effective in the name, of the date, and in the respect stated in such notice (R. 141).

6. All insurance or disability claims paid, were paid by the Connecticut Co.'s own checks to the order of the appropriate beneficiary, and mailed and delivered to the Pennsylvania Co. *in Pennsylvania;* which checks the Pennsylvania Co., in turn, acting for its own employees, sent to its subsidiary for delivery to the beneficiary in whatsoever State or foreign country he might at the time be located (R. 90, 126, 132, 139).

7. Connecticut General never dealt with Gulf Oil *except in Pennsylvania;* and it never dealt with any of its subsidiaries, or the employees thereof, at any place whatsoever (R. 131, 135, 138, 142, 144).

Connecticut General never authorized or requested either Gulf Oil or Refining Co. to act for it in any manner whatever; and exercised no control or direction, directly or indirectly, over Gulf Oil's method of securing "payroll deduction orders", premium payments, notices, certificates, claims or the payments thereof (R. 132-3, 138, 140-148); and all acts of both Gulf Oil and Refining Co. were purely on behalf of their own employees and not as agent for Connecticut General, which indeed had no correspondence or other dealings with Refining Co. at any time (R. 93, 94).

Connecticut General's checks to the order of the beneficiaries in payment of claims; and mailed such certificates and checks from Pennsylvania to its own subsidiaries in the various States and foreign countries, for delivery to the employees and beneficiaries there located.

The GULF OIL's receipt in Pennsylvania of the amounts deducted from its own employees' wages in the various States and foreign countries, were acts by the Gulf Oil in its own behalf, and not on behalf of Connecticut General.

On those facts, it was a Pennsylvania Contract (*Mutual Life Co.* v. *Johnson,* 293 U. S. 335, 339; *Mutual Life Ins. Co.* v. *Liebing,* 259 U. S. 209, 214; *Equitable Life Ins. Co.* v. *Clements,* 140 U. S. 226; Story's Conflict of Laws, §§ 242-244, 261, 263; Beale's Conflict of Laws, Vol. 2, p. 1091 § 3324).

The only acts performed by anyone *in Texas* were:

(*a*) Boseman's advance execution of the "payroll deduction order" signifying his wish to be included among the "certain employees" to be insured, and authorizing the "proper" deduction from his wages towards paying therefor;

(*b*) Refining Co.'s $2.40 monthly deduction from Boseman's wages, and its mailing to Gulf Oil in Pennsylvania, the monthly aggregate of such payroll deductions, with notices of the names of the employees authorizing such deductions, and discharged, dying, becoming disabled, or otherwise terminating their insurance or employment, and beneficiaries' claims for death or disability; and

(*c*) Refining Co.'s receipt (by mail from Gulf Oil in Pennsylvania) of individual certificates and Connecticut General's checks in payment of death and disability claims; and their delivery to the beneficiaries, solely "for the aid and benefit of our employees" and *not* "in any capacity to aid or benefit the Connecticut General" (R. 93, 103, 144).

Under all "group" policies:

1. The Employer always acts either (*a*) in its own behalf as the sole policyholder, or (*b*) as a "paternalistic" agent for the benefit of its employees insured thereunder; and **it never acts as agent for the Insurance Company** (C. C. A. (5th) R. 239, and cases there cited).*

2. The Insurance Company **always acts solely in its own behalf,** dealing with the one—and only one person whom it recognizes as the other contracting party,** *i. e.* the Employer—policyholder, to-wit: in this case, Gulf Oil (R. 138-9, 144).

I.

These same acts (thus performed *in Texas* by, or for, Boseman and other Texas employees) were *simultaneously performed* by, or for, thousands of other employees and beneficiaries **in many States and foreign countries.**

---

* *Duval* v. *Metropolitan Life,* 82 N. H. 543; *Equitable Life* v. *Hall,* 253 Ky. 450; *Leach* v. *Metropolitan,* 124 Kan. 584, 261 Pac. 603; *Peyton* v. *Metropolitan Life* (La. App.), 148 So. 721; *Connecticut General Life* v. *Speer,* 185 Ark. 615; *State* v. *Connecticut General Life,* 168 S. C. 516; *Dewease* v. *Travelers Ins. Co.,* 208 N. C. 732; *Joiner* v. *Metropolitan Life,* 40 Ga. App. 750; *Barnes* v. *Aetna Life* (Tex. Civ. App.), 7 S. W. (2d) 946.

** Of course the Insurance Company recognizes that the employee (or beneficiary) as the third party for whose benefit the "group" policy has been issued, can sue the Insurance Company (C. C. A. (5th) Opinion, R. 239, and cases there cited). The individual certificate (which by statute the Insurance Company is required to furnish to the Employer for delivery to the employee) is merely evidence that the employee (who has submitted to a monthly wage deduction by his Employer) is in fact one of the employees included among the "certain employees" insured under the policy.

Is the single contract of insurance G-5039-R *simultaneously* a Texas contract for Boseman, a Pennsylvania contract for employees there, a California, Florida, Connecticut or Kentucky contract for employees in those States, and a Borneo or South African contract for employees there?

What about an employee moving from Texas to Pennsylvania, (*a*) immediately *before* death, or (*b*) immediately *after* signing the advance "payroll deduction order"?

Or an employee who signed an advance deduction order in Ohio, then moved to West Virginia where he received his individual certificate and some wage deductions were made, and then moved to Maryland, where he finally became disabled—with different statutes in each of those States as to the disability notices required?

When a single "group" policy insures an army of employees, with its members constantly shifting their individual locations through many States and foreign countries, each with different and often directly contrary laws, and with the premiums and insurance protection increasing from place to place, with the longer service and higher salaries earned, we have the situation described by Mr. Justice Holmes in the *Mixer* case (267 U. S. at 551):

> "The act of becoming a member is something more than a contract,—it is entering into a complex and abiding relation,—and as marriage looks to domicil, membership looks to and must be governed by the law of the state granting the incorporation."

The C.C.A. said (R. 239):

> "Employes' group insurance partly or wholly paid for by the employer resembles to some extent insurance by a

mutual benefit association, which is obtained by joining the association. Although the insurance of the particular new member arises only on his becoming such, his insurance is usually governed *not by the law of the place where he lives and receives his certificate* but of that under which the association operates. The federal courts have been inclined to treat such insurance not as diverse contracts under the particular laws of the several States where members reside but as under the laws of the home State and thus uniform. *Royal Arcanum* v. *Green*, 237 U. S. 532; *Modern Woodmen* v. *Mixer*, 267 U. S. 544; *Minnesota Com. Association* v. *Benn*, 261 U. S. 140."

So that, except for the special agreement between Gulf Oil and Connecticut General as to the Pennsylvania laws, it might well be held that the laws of Connecticut should govern.

II.

A "group" policy may insure 100,000, or more, employees, scattered throughout 48 States (and in many instances foreign countries), where employees are constantly moving from one State to another at various stages in their employment, from before the delivery of the policy until death occurs or until after a disability has happened (involving perhaps four or five separate moves from State to State). Where all transactions between the Insurance Company and the Employer take place exclusively in the States of their respective Home Offices, and, they, in good faith, affirmatively agree upon the law of the Employer's State to govern the contract, such law should govern the performance of the contract for the benefit of the insured employees, rather than to invite the uncertainty and confusion as to the conflicting rights, duties and liabilities of the Insurance Company, Employer

and employee which would inevitably result from any attempt to apply the laws of the States of the employee's residence at one or the other of the various times where he might be residing while different transactions connected with the insurance took place (*Royal Arcanum* v. Green, 237 U. S. 531; *Modern Woodmen* v. *Mixer*, 267 U. S. 544; *Minnesota Assn.* v. *Benn*, 261 U. S. 140; *Mutual Life Co.* v. *Johnson*, 293 U. S. 335; *Swift* v. Tyson, 16 Pet. 1).

Because of the considerations just mentioned, Gulf Oil and Connecticut General agreed that the policy should be governed by the laws of Pennsylvania, which was the State of the Employer's Home Office, and in which State the policy was delivered, from which all premiums were paid, all notices of insurances, increases and reductions, terminations, and claims for death and disability, were mailed to the Insurance Company in Connecticut; and also the State to which the Insurance Company sent all individual certificates and checks for ultimate delivery by Gulf Oil to all beneficiaries, wherever located.

Pennsylvania had a more substantial interest in connection with the contract, and its continued performance for many years, covering thousands of employees located in Pennsylvania and many other States, than even Connecticut; and the agreement of Gulf Oil and Connecticut General that the Pennsylvania laws should govern ought to be carried out (*Mutual Life Ins. Co.* v. *Hill*, 193 U. S. 551; *Seaman* v. *Philadelphia Warehouse Co.*, 274 U. S. 403; *Mutual Benefit Health & Acc. Assn.* v. *Baldridge*, 70 Fed. (2d) 236; *Clark* v. *Gibbs*, 69 Fed. (2d) 264; *Coughlin* v. *S. C. Ry. Co.*, 142 U. S. 101; *Pritchard* v. *Norton*, 106 U. S. 124).

As the C. C. A. aptly said (R. 240):

> "Parties in contracting may adopt as part of their contract the laws of a State other than their own if not contrary to the law or public policy of the State where the contract is made and to be performed. *Mutual Life Ins. Co.* v. *Hill*, 193 U. S. 551."

In this case, the parties adopted the laws of the State of one of the parties, where the contract was delivered and where every act of the contracting parties thereunder, and the performance of the contract, were carried out, except perhaps the casual incident of Gulf Oil (acting in a paternalistic capacity for its own employees) sending the Connecticut General's checks (in payment of claims) for delivery to the beneficiaries in the many States and foreign countries where such beneficiaries lived.

The C. C. A. said (R. 240, 241):

> "Let it be remembered that this policy was applied for, the first premium was paid, and the policy was delivered *in Pennsylvania*, and that ordinarily fixes the place where an insurance contract is considered to be made. . . .
>
> "The insurer [Conn. General] did not go out of Pittsburgh to make this arrangement, and all notices or payments necessary to carry it on are done there. The employe transacts nothing with his insurer in Texas in making and sustaining his insurance, but all his transactions are with the employer and through him with the insurer in Pittsburgh. The business is substantially done in Pittsburgh and the parties may without imputation of evading the law of any other State agree that they are dealing uniformly under the law of Pennsylvania. Boseman in applying to his employer for participation in the policy and by accepting his certificate expressly agreed to the provision requiring notice of claim and it is a material part of the insurance contract. The law of Pennsylvania sustains it, . . . The law which will sustain rather than that which will defeat a plain and fair agreement ought where possible to be applied."

III.

Boseman was not one of the contracting parties. He was merely a third party, for whose benefit the contract was made. He cannot, in one breath, accept the contract and seek the benefits therein conferred, and at the same time, seek to avoid the contract's material provisions, without which the contract would never have been made (*City* v. *Lamson*, 9 Wall. 477; *Western Union* v. *Scarborough*, 68 S. W. (2d) 1027 (Texas Com. App.); *Thompson* v. *Pacific Mills*, 141 S. C. 303; *Magee* v. *Equitable Life*, 62 North Dakota 614); *Kingsland* v. *Missouri State Life*, 66 S. W. (2d) 959 (Mo. App.); *Equitable Life* v. *Hall*, 253 Ky. 450; *Davis* v. *Metropolitan Life*, 32 S. W. (2d) 1034 (Tenn.); *Home Mortgage Co.* v. *Ramsey*, 49 Fed. (2d) 738; *Allan* v. *Moline Plow Co., Inc.*, 14 Fed. (2d) 912). The C. C. A. so held citing seven additional authorities (R. 239).

The C. C. A. thus summed up the situation (R. 240):

> "Whether we look at the case before us in its general aspect or at the special circumstances under which Boseman became insured we are of opinion that **the transaction of insurance occurred in Pennsylvania and not in Texas.** If employes in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania, and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do not control it. *Allgeyer* v. *Louisiana*, 165 U. S. 578; *New York* v. *Amringe*, 266 N. Y. 277; *Hartford Ind. Co.* v. *Delta Co.*, 292 U. S. 143.
>
> The conclusion that the laws of Pennsylvania ought to control is much strengthened by the express agreement to that effect of all parties both in the application for the policy, in the policy itself, and in the certificate accepted by Boseman."

IV.

The Texas statute (Rev. Civ. Stat. Art. 5546) relied on by Boseman, attempts to invalidate the contractual requirement for notice within 60 days; and it is subject to exactly the objections which were fatal to the immediately preceding Art. 5545 in *Home Ins. Co.* v. *Dick*, 281 U. S. 397, where it was said (pp. 407, 410)

> "As construed, it also directs the disregard in Texas of contractual rights and obligations wherever created and assumed; and it commands the enforcement of obligations in excess of those contracted for. . . . It purports to create rights and obligations. It may not validly affect contracts which are neither made nor are to be performed in Texas."

REVIEW OF AUTHORITIES.

Allgeyer v. *Louisiana*, 165 U. S. 578, 588, held that Allgeyer's letter of notification mailed in Louisiana to the Insurance Company in New York,

> "was but the performance of an act rendered necessary by the provisions of the contract already made between the parties outside of the State. It was a mere notification that the contract already in existence would attach to that particular property. In any event, the contract was made in New York, outside of the jurisdiction of Louisiana, even though the policy was not to attach to the particular property until the notification was sent."

In the case at bar, neither Gulf Oil, Refining Co. or Boseman mailed in Texas any letter or notification to Connecticut General. Boseman's execution and delivery in

Texas of the "payroll deduction order" to Refining Co. was a mere notification to his Texas employer that he (Boseman) elected to take the benefit of a contract which a different corporation (Gulf Oil) proposed to make in Pennsylvania with Connecticut General. Refming Co. notified Gulf Oil of Boseman's election.

If Louisiana could not punish Algeyer, Texas could not punish Boseman. If Allgeyer's insurance policy was a New York contract, notwithstanding his letter of notification mailed in Louisiana, certainly G-5039-**R** is a Pennslyvania contract; and it was not converted into a Texas contract by the *prior* act of Boseman, who was not even a party to G-5039-**R**.

In *Minnesota Assn.* v. *Benn*, 261 U. S. 140 (1923), this Court held that a Minnesota Assessment association was not "doing business" in Montana, even though it insured Montana members through application forms [which it had furnished to older Montana members for solicitation purposes] signed in Montana, and mailed to Minnesota with the requisite fee; which were accepted there, and certificate of membership, notices, applications for new members, etc. mailed back to the newly accepted Montana member, who in turn mailed his dues, assessments, etc., to Minnesota; and the Association paid claims against it by mailing checks from Minnesota direct to Montana. The Court said (citing numerous cases):

> "We think it cannot be said that the Association was doing business in Montana, merely because one or more members, without authority to obligate it, solicited new members . . . An insurance corporation is not doing business within a state merely because it insures lives of persons living therein, mails notices addressed to beneficiaries at their homes, and pays losses by checks from its home office."

Connecticut General did not, at any time, deal even by mail with Boseman or with anyone else in Texas. If, in the *Benn* case, the Minnesota company was not "doing business" in Montana, how can it be said that Connecticut General's actions made G-5039-R a Texas contract?

In *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389 (1924), the Aetna Life issued to Dunken, in Tennessee, a "term" policy (concededly a Tennessee contract), which provided that Dunken might convert it into a "20-pay" policy upon payment of certain additional premiums. Dunken moved to Texas. While living there he applied by mail from Texas to Aetna Life (in Connecticut) for the promised "20-pay" policy. Aetna Life issued the new "20-pay" policy (with terms exactly as promised in the original "term" policy), and mailed it (through its Tennessee agency) to Dunken in Texas, where Aetna Life was also doing business.

Dunken died in Texas; his Administratrix demanded payment which Aetna Life refused.* She sued, (as here) for the usual statutory 12% penalty and $3,000 attorney's fees (Texas Rev. Civ. Stat. Art. 4746, now Art. 4736).

This Court held that the Texas law did not apply, on the ground that the original "term" policy was a Tennessee contract; that the new policy was issued and delivered *in Texas* in strict compliance with what the Tennessee contract required the Aetna Life to do on demand;

* On the ground that Dunken had never paid the additional premiums required upon conversion. However, the jury and the Texas State court decided that the policy had been ***unconditionally delivered*** to Dunken ***in Texas***, which finding was conclusive in this Court, and foreclosed all question as to Aetna Life's liability for the *face* of the policy (266 U. S. at p. 394).

and that the new policy was controlled by the Tennessee law, and not by Texas law, saying (pp. 399-400):

"The contract contained in the original policy was a Tennessee contract. The law of Tennessee entered into it and became a part of it. The Texas statute was incapable of being constitutionally applied to it since the effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other States in disregard of their laws under which penalties and attorney's fees are not recoverable. *New York Life Ins. Co.* v. *Head*, 234 U. S. 149; *Overby* v. *Gordon*, 177 U. S. 214, 222. The second policy here was issued in pursuance of, and was dependent for its existence and its terms upon, the express provisions of the contract contained in the first one. By those provisions, upon the simple application of the insured, the new policy must issue. Nothing was left to future agreement. The terms of the new policy were fixed when the original policy was made. In effect, it is as though the first policy had provided that upon demand of the insured and payment of the stipulated increase in premiums that policy should, automatically, become a twenty payment life commercial policy. It was issued not as the result of any new negotiation or agreement but in discharge of preexisting obligations. It merely fulfilled promises then outstanding; and did not arise from new or additional promises. The result in legal contemplation was not a novation but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract. If the insurance company had refused to issue the second policy upon demand, the insured could have compelled it by a suit in equity for specific performance. See *Tayloe* v. *Merchants' Fire Ins. Co.*, 9 How. 390, 405.

"From these premises it necessarily results that the second policy follows the status of the first for which it was exchanged, and is not subject to the Texas statute relating to penalties and attorney's fees but is controlled by Tennessee law. The judgment below, therefore, in so far as it gives effect to the Texas statute by imposing a penalty of twelve per cent. and allowing attorney's fees, is erroneous, in that the Texas statute cannot constitutionally be applied to a Tennessee contract."

Let us apply that doctrine here.

Policy G-5039-R was initially a Pennsylvania contract. It insured for amounts certain (the respective amounts and eligibility being precisely fixed by the policy itself) all "eligible" employees who elected insurance by signing any form of "payroll deduction order" approved by Gulf Oil.

Dunken and Boseman each signed in Texas, their respective elections: (1) Dunken to receive a tangible physical new policy deliverable in Texas, as had been promised him under his Tennessee contract; (2) Boseman not to receive a tangible physical paper (delivered in Texas as in *Dunken's* case), but merely to be "intangibly included" among the "certain employees" provided for in the existing Pennsylvania contract.

If, in *Dunken's* Case, Texas could not impose its laws upon the new policy sued on, which had been sent from Connecticut and physically delivered to Dunken in Texas, then, *a fortiori,* Texas cannot impose its laws upon G-5039-R (which has *never* been in Texas, was delivered *in Pennsylvania* to Gulf Oil, which still has possession of it *in Pennsylvania,* and upon which contract alone Boseman has sued; (pp. 17-18, *supra*).

In both instances, a Connnecticut insurance company, having made contracts, one in Tennessee and the other in Pennsylvania, has, *verbatim et literatim,* merely complied with that which the persons living in Texas elected to demand under the prior terms of such Tennessee and Pennsylvania contracts—especially as Boseman's signification of his desire to be included among those "certain employees" insured, was given to Gulf Oil even *before* the Pennsylvania contract was made.

In *Hartford Ind. Co.* v. *Delta Co.*, 292 U. S. 143 (1934), the Hartford Co. (a Connecticut corporation doing business in both Tennessee and Mississippi) delivered a fidelity bond in Tennessee to the Delta Co. (a Mississippi corporation likewise doing business both in Tennessee and Mississippi), thereby insuring the honesty of all the Delta Co.'s employees "in any position, anywhere", including its treasurer Harris, who was then located in Tennessee. The bond contained a "contractual limitation" that the Delta Co. must make any claim thereunder *within fifteen months* after the bond terminated.

The treasurer, Harris, removed to Mississippi, and then defaulted in Mississippi between May 9—December 20, 1929. The bond was cancelled and terminated on December 31, 1929.

The Delta Co. mailed its claim *from Mississippi* to the Hartford Co. in Connecticut on June 22, 1931—more than *seventeen* months after such termination, and hence two months after the *fifteen* months' "contractual limitation" had barred recovery.

The fifteen months' limitation was good in Tennessee.

The Mississippi Code (as construed by its highest court, and hence binding in the Federal Courts) provided (1) that any contract insuring property or interests in Mississippi, or made with a resident of Mississippi was a Mississippi contract and deemed to be made in Mississippi (Sec. 5131); and (2) that any "contractual limitation" (departing from the general Mississippi Statute of Limitations) was *absolutely void*, so that all litigants would be subject to the same Statute of Limitations (Sec. 2294).

The Mississippi Court held (*a*) that the bond was a Mississippi contract because it insured against a defalcation taking place in Mississippi (Sec. 5131; p. 148); and

(*b*) that under Sec. 2294, the fifteen months' "contractual limitation" was unenforceable (just as the District Court held in *Boseman's* case).

This Court reversed the Mississippi Court, and held that the Mississippi laws, so construed, deprived the Hartford Co. of "due process of law" in that they attempted to change the obligation of a contract, valid where made, merely because one party thereto was a citizen of Mississippi, and the loss insured against happened to occur in Mississippi and that the ultimate performance of the suretyship bond by paying the defalcation "at most involved only the casual payment of money in Mississippi", saying (pp. 149-150):

> "It is urged, however, that in this case the interest insured was in Mississippi when the obligation to indemnify the appellee matured, and it was appellant's duty to make payment there; and these facts justify the state in enlarging the appellant's obligation beyond that stipulated in the bond, to accord with local public policy. The liability was for the payment of money only, and was conditioned upon three events,—loss under the policy, notice to the appellant at its home office, and presentation of claim within fifteen months of the termination of the suretyship. All of these conditions were of substantial importance, all were lawful in Tennessee, and all go to the obligation of the contract. It is true the bond contemplated that the employee whose faithfulness was guaranteed might be in any state. He was in fact in Mississippi at the date of loss, as were both obligor and obligee. The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations by reason of the State's alleged interest in the transaction? We think not. . . . [a State] may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. Here performance at most involved only the casual payment of money in Mississippi. In such a

> case the question ought to be regarded as a domestic one to be settled by the law of the state where the contract was made. A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amendment. *Aetna Life Ins. Co.* v. *Dunken, supra; Home Insurance Co.* v. *Dick, supra.*"

As there, so here.

There, Mississippi and Connecticut corporations made a valid contract of suretyship in Tennessee, with a "contractual limitation", valid in Tennessee, just as here Connecticut and Pennsylvania corporations made a contract of insurance in Pennsylvania, with a "contractual limitation" valid there.

One of the Mississippi company's many employees (whose honesty was insured), moved to Mississippi, and while engaged there in business for the Mississippi company, (the Connecticut company also doing business in Mississippi) such employee defaulted and the bond was breached in Mississippi; from whence, the Mississippi corporation *belatedly* (as did Boseman) made claim at the Connecticut corporation's Home Office just as Boseman becoming disabled in Texas (thereby acquiring a right of action) *belatedly* presented his claim to the Connecticut General's Home Office.

In each case, the "contractual limitation" was valid in the State where the bond (or policy) was delivered; and in each case, the contingency insured against, occurred in a State where the "contractual limitation" was void.

In the *Delta Co.* case, this Court held that Mississippi could not change the "contractual limitation" contained

in the contract made in Tennessee, merely because the loss insured against occurred in Mississippi and one of the parties to the contract was a citizen of Mississippi.

The same reasoning demonstrates that Texas cannot invalidate the "contractual limitation", valid in Pennsylvania, where G-5039-R was initially a valid Pennsylvania contract, merely because (*a*) the contingency insured against, *i. e.* disability, occurred in Texas to a Texas citizen, and (*b*) the performance of the "group" policy would involve only a casual payment of money by Gulf Oil sending the Connecticut General's check from Pennsylvania to Boseman in Texas.

As pointed out in *Home Ins. Co.* v. *Dick,* 281 U. S. 397, 410, the Connecticut General is not seeking favors of Texas or asking the aid of its Courts to enforce a contract. It only demands that if Texas enforces G-5039-R against it, Texas must not destroy a material clause in the contract, constituting a defense to the suit (*Bradford Elec. Co.* v. *Clapper,* 286 U. S. 145, at 160).

The mere fact that Boseman (in Texas) *was insured* under G-5039-R, would not even subject Connecticut General to a Texas tax upon the premiums it received from Gulf Oil in Pennsylvania (*St. Louis Compress Co.* v. *Arkansas,* 260 U. S. 346); nor, indeed, the mere mailing of checks *from Texas* to Connecticut in payment of premiums (*Provident Savings Assn.* v. *Kentucky,* 239 U. S. 103); and hence, if the State's broad power to tax could not reach such a situation, surely G-5039-R should not be held to be a *Texas* contract, subject to the laws of Texas, in a purely private controversy between two persons, where the sole question was as to

the laws of *which* State should govern the contract (Cf. *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 407-410).*

Palmetto Ins. Co. v. Conn, 272 U. S. 295.

Palmetto Ins. Co. v. *Conn*, 272 U. S. 295 (strongly relied on by Boseman**), involved Ohio's power to tax Palmetto Co. with respect to a policy delivered in Michigan insuring all purchasers of Chrysler automobiles in Ohio.

Palmetto Co. (licensed to do business in Ohio) made an insurance contract in Michigan with the Chrysler

---

* It is true that in *Equitable Life Society* v. *Pennsylvania*, 238 U. S. 143 (where the Company was admittedly doing a very large business in Pennsylvania) it was held that Pennsylvania could levy a tax, not only upon the premiums collected *in Pennsylvania*, but upon renewal premiums collected at the Company's New York office upon policies in force in Pennsylvania.

In *Compania De Tobacos* v. *Collector*, 275 U. S. 87, that doctrine was pushed to the extreme limit in holding that the Phillipine Islands could tax a Spanish company doing business in the Phillipines, on account of the premiums which it paid from Spain to a London insurance company under an insurance policy contract not entered into in the Phillipines, but between the Spanish company (in Spain) contracting with the London company (in England) for the insurance of the Spanish company's property in the Phillipines. The decision rested on the slender argument that, as the London company was authorized and *presumably* was doing some business in the Phillipines, it *might possibly require* the activities of its agents in the Phillipines with respect to any adjustment and settlement of losses (if any) on the insured property in the Phillipines.

Both the *Equitable Life* and the *Tobacos* decisions rested on the theory that because the insurance company was doing business in Pennsylvania and the Phillipines, respectively, those

---

** Although decided in 1926, this Court has cited the *Palmetto Case* but once in ten years, and then only in a footnote as a "Compare" case; whereas, it has constantly cited the recent cases on which we rely, *i. e. Dunken Case* (8 times), *Home Ins. Co.* v. *Dick* (11 times) and the *Delta* and *Benn Cases* (each once)—although they all dealt with the same problem, viz: the effect of an insurance policy delivered in one State covering a risk in another State.

Sales Corporation of Michigan (hereafter called Chrysler Co.) to insure against fire and theft all purchasers of Chrysler cars—the insurance to become automatically effective from the date the purchaser got the car.

If that were all there were to it, this Court conceded that Ohio could not tax Palmetto Co., saying (p. 304):

> "Manifestly there was nothing in the contract between the plaintiff [Palmetto Co.] and the Chrysler Sales Corporation, without more, that Ohio could lay hold of, even if it insured property in Ohio."

But that was *not* all there was to it. The premiums [paid by Chrysler Co. to Palmetto Co. under the Michigan contract] were, in turn, absorbed in, and added to, the price of each car, which each purchaser had to pay to the dealer selling him the car. If anyone bought a car, he had to pay for the insurance in that way, and get the

---

governments had the right to tax them for the privilege of doing business there, even though the measure of the tax was upon something which could not have been taxed had the company not been doing other business in the state. (See *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 408 note.)

Even that doctrine is not applicable here, because Connecticut General, while admitted to do business in Texas, *has never done any insurance business there;* and the present case does not involve the *power* of Texas *to tax* Connecticut General for the privilege of being admitted to the State (although not doing any insurance business therein) measured by premiums paid to it (*in Connecticut*) by Gulf Oil (*from Pennsylvania*) which neither resides in Texas nor is admitted to do business therein.

It would be a very extreme extension of the *Compania De Tobacos* doctrine to say that a corporation admitted to do business within a State can be taxed by a measure determined (for example) by the amount of the total premiums collected throughout the United States, or collected from its "group" business therein, or from "group" business in Pennsylvania, or from "group" business on railroads, oil companies or other forms of activity, bearing no reasonable relationship whatever to its bare admission (without doing business) in the State.

Alaska Packers Assn. v. *Comm'n*, 294 U. S. 532, is so inapplicable here as to require no notice.

insurance, whether he wished it or not, as a part of his bargain; and he thereby *paid in Ohio* the cost of the insurance to the dealer, who, in turn, had already paid for the car by purchasing it from the Chrysler Co.; and then Palmetto Co. mailed a certificate to the purchaser in Ohio.

This Court held that the substance of the transaction was "that *by acts done in Ohio* the purchaser obtains for himself the advantage of insurance that before that moment did not exist . . . and we cannot doubt that the lower Court was right in holding that under such circumstances the State could insist upon its *right to tax*" (p. 305).

The basis of the *Palmetto* decision seems to have been that the purchaser *in Ohio* of a Chrysler car was compelled, whether he wished it or not, to pay a fixed sum for the car, *plus* the insurance thereon; that he was not allowed to purchase the car *without the insurance*, for a *lesser* sum; that the effect of the transaction was that the purchaser *paid in Ohio* the premium for *insurance on his car in Ohio;* and that, under these facts, the insurance company was brought within the *taxing power* of the State.

A great difference between the *Palmetto Case* and Boseman's case is this: Palmetto Co. insured separately each Chrysler car (wherever sold) against fire or theft; and this insurance continued regardless of any future relation of the car to Chrysler Co. It was simply an independent insurance of a car, for which each purchaser was compelled to pay, whether he wished it or not, at the time he bought the car.

It did not contain the unifying principle of "group" insurance, where the Company collectively insures all of an Employer's employees who may care to be included in the "group", and whose insurance only lasts while they remain so employed by the Employer.

The relationship of the employees (while the employment continues) to their Employer and to the insurance company, is totally different from the relationship of thousands of individual purchasers of Chrysler cars to the hundreds of separate dealers or distributors from whom the cars are separately purchased, and with whom no relationship exists after the car is paid for.

Without stopping to consider whether the *Palmetto Case* was wrongly decided and should be overruled, or whether it was merely a "close" case, sustainable under the *Compania De Tobacos Case* (275 U. S. 87, at p. 98; London Co. branch), it is clearly distinguishable here. It merely decided that the "due process" clause did not prevent Ohio's broad *power to tax* from imposing a tax on a corporation admitted to do business in Ohio, in respect of *so much* of the purchase price (which an Ohio purchaser *paid in Ohio*) as had been "earmarked" as included in such price for the purpose of representing the premium previously paid to Palmetto Co. for the insurance protection; which protection did not become effective until the car was *delivered in Ohio* to the purchaser; and where the loss, if any, was to be paid by Palmetto Co. to the purchaser *at his address in Ohio.*

Whatever may be thought of *Equitable Life Society v. Pennsylvania,* 238 U. S. 143, 147, sustaining Pennsylvania's power to "measure" the tax on an insurance company doing a large business within the State, by

the amount of renewal premiums collected in New York from Pennsylvania policyholders, because of the mere *likelihood* that the company would have to attend to various matters in Pennsylvania respecting such policies (paying dividends to policyholders, sending adjusters into Pennsylvania in case of disputes, etc.), or its extension in *Compania De Tobacos*, 275 U. S. at page 98, to sustain the Philippines' *power to tax* on the assumption that the tax there placed upon the assured "must *ultimately* be paid by the *insurer*" who admitted to do business in the Philippines was "presumably" doing business there, and who *might* have to act in the Philippines in the settlement of any losses, it must be conceded (as plainly indicated in the *Equitable Life Society Case*, 238 U. S. at p. 146) that there is a great difference between the measure of a State's admitted *power to tax*, and whether the company is "*doing business*" within a State. Different principles apply.

A fortiori, here, where this case does not involve either the State's power to tax, or what constitutes "doing business" so as to subject a corporation to the State's jurisdiction, but only whether, in a private litigation between two litigants, the State can say that *its* laws shall govern the contract rather than the laws of another State (Cf. *John Hancock Mutual* v. *Yates*, ——— U. S. ——— Dec. 7, 1936).

This Court is so familiar with the distinctions between cases involving the power of a State to tax and the measure of such tax (*Equitable Life Society, Compania De Tobacos* and *Palmetto Cases*) and the "doing business" cases, on the one hand, and on the other hand, the cases involving purely private controversies regarding

the laws of *which* State should control (*Penn, Dick, Dunken, Allgeyer, Delta Co., Mutual Life Co.* v. *Johnson, Liebing, Dodge, Head, Yates,* and *Bradford Electric Cases*), that it is unnecessary further to review them.

Conclusion

The C. C. A's judgment should be affirmed.

B. M. ANDERSON,
MAJOR T. BELL,
WM. MARSHALL BULLITT.

March 2, 1937.

APPENDIX.

I. Texas' Revised Civil Statutes.

"Art. 4736.* In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss."

"Art. 4764a. Section 1. . . .

Sec. 2. No policy of Group Life Insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the Life Insurance Commissioner of the State of Texas and formally approved by him, nor shall such policy be so issued or delivered unless it contains provisions substantially as follows:

(1) . . .

(2) A provision that the policy, the application of the employer, and the individual applications, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer, or by individual employees shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense of a claim under the policy, unless it is contained in a written application.

(3) . . .

---

* Formerly Art. 4746 (See 266 U. S. 389).

(4) A provision that the Company will issue to the employer for delivery to the employees, whose life is insured under such policy, an individual certificate setting forth a statement as to the unusual protection to which he is entitled, to whom payable, together with provision to the effect that in case of the termination of employment for any reason whatsoever the employee shall be entitled to have issued to him by the Company, without evidence of insurability, and upon application made to the Company within thirty-one days after such termination, and upon the payment of the premium applicable to the class of risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of Life Insurance in any one of the forms customarily issued by the Company, except terms unnamed, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination which policy may or may not contain provisions for disability benefits and provisions for accidental death benefits, at the option of the Company.

(5)

Sec. 3. . . .

Sec. 4. . . .

Sec. 5. . . .

Sec. 6. Except as may be provided in this Act, it shall be unlawful to make a contract of life insurance covering a group in this State (Acts 1931 p. 172, ch. 101, effective May 5, 1931).

"Art. 5054.* Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the

* Formerly Art. 4950 (Id.).

contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same."

"Art. 5056. Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter * * *"

Art. 5546.* No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void * * *"

---

* Cf. Art. 5545 involved in *Home Ins. Co.* v. *Dick*, 281 U. S. 397.

II. PURDON'S PENNSYLVANIA STATUTES, ANNOTATED, Title 40, Section 532.

"**Standard Provision for Policies of Group Life Insurance.** No policy of group life insurance shall be issued or delivered in this Commonwealth, unless and until a copy of the form thereof has been filed with the Insurance Commissioner and formally approved by him, nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

"(a) - - - - -

"(b) A provision that the policy, the application of the employer, and the individual applications, if any, of the em- the parties, and that all statements made by the employer, or by the individual employees, shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application.

"(c) - - - - -

"(d) A provision that the company will issue to the employer, for delivery to the employees whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provision to the effect that in case of the termination of the employment for any reason whatsoever, the employee shall be entitled to have issued to him by the company, without evidence of the insurability, and upon application made to the company within thirty-one days after such termination, and upon the payment of the premium applicable to the class of risks to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company,

except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination.

"(e) - - - - -

"Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this Commonwealth."

SUPREME COURT OF THE UNITED STATES.

No. 531.—October Term, 1936.

John Boseman, Petitioner, *vs.* Connecticut General Life Insurance Company. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 26, 1937.]

Mr. Justice Butler delivered the opinion of the Court.

Petitioner, a citizen and resident of Texas, brought this action against respondent, a Connecticut corporation, in a Texas court to recover $4,000 with interest and attorney's fees. Respondent removed the case to the federal court for the eastern district of Texas.

The suit was to recover for permanent total disability under a policy of group insurance issued in Pennsylvania by respondent to the Gulf Oil Corporation. It covers employees of that corporation and its subsidiaries of which the Gulf Refining Company is one. Petitioner, an employee of that company, by that policy was insured in respect of life and disability. It provides that "no claim for permanent total disability incurred by any employee during his period of employment shall be paid after the termination of such employment unless such employee gave written notice of such disability to the Company during the said period of employment or within 60 days thereafter." That provision is conceded to be valid under Pennsylvania law. Petitioner failed to give the notice within the time specified. Article 5546, Revised Civil Statutes of Texas, declares that no stipulation in a contract requiring notice as a condition precedent to the right to sue thereon shall be valid unless reasonable. "Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void . . ." The district court held the Texas law controlling and refused to give effect to the quoted policy provision. The Circuit Court of Appeals held the Pennsylvania law applicable, the policy provision valid and that petitioner, having failed to give the required notice, was not entitled to recover. 84 F. (2d) 701. The sole question is whether the Pennsylvania law or the Texas law governs.

In 1916 petitioner became an employee of the refining company and thereafter worked for it until October 8, 1932. During parts of that period he was insured by two group policies issued by defendant to the oil corporation. Both covered employees of the refining company. One, No. G5039, became effective in 1919; the employer paid the premiums; the employees contributed nothing to reimburse the employer or to procure the insurance or to keep the policies in force. The other, No. G5545, became effective in 1925; employees contributed part of the premiums thereon. Both terminated at the time of the taking effect, April 1, 1932, of the one, No. G5039R, under which petitioner brought this action.

March 7, 1932, plaintiff made an application under the last mentioned policy—then in contemplation—for the amount applicable on and after April 1, 1932, according to his salary classification and continuous service as provided in the policy. In his application he agreed to be bound by the rules governing the insurance, authorized his employer to deduct in advance the proper amount per month from his pay to cover a part of the premiums to be paid by the oil corporation to defendant on the policy to be issued, accepted cancelation of his insurance and released claims under the earlier policies and, in lieu of that protection, took the benefits granted by the new policy. The application was not addressed, made or sent to defendant. It was delivered to, became and remained a part of the permanent records of, the refining company.

March 15, 1932, the oil corporation made written application, which was signed by it and delivered to defendant in Pennsylvania, for the policy of insurance and in the same instrument asked cancelation of the earlier policies. It requested that the policy be issued in Pennsylvania and that it be governed by the laws of that State. Final agreement between defendant and the oil corporation for execution and delivery of the policy was reached in Pennsylvania. On or about the same day defendant accepted the application; it signed the policy in Connecticut and issued and delivered it to the oil corporation in Pennsylvania. In that state the oil corporation paid the binding premium required by the policy. None of the negotiations for the policy and no act done for its execution or delivery took place in Texas or in any State other than Pennsylvania and Connecticut.

The policy also provides: It is issued for a term of one year in consideration of the application of the employer, the payment of

a binding premium and of other premiums provided for. Each employee in service April 1, 1932, insured up to that date under policy G5545 becomes eligible on April 1, 1932. An employee may elect insurance under the policy by completing any form of payroll deduction order approved by the employer. Each employee electing the insurance before becoming eligible will be insured automatically on the day he becomes eligible. On the effective date of the policy and on each annual renewal date an average annual premium rate will be established. The employer shall give the insurer notice of terminations of insurance and additions of employees becoming eligible. The changes shall be considered as having taken effect as if notice thereof had been given in advance. Upon termination of employment of any insured employee his insurance shall be canceled. "The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms and conditions outlined in the policy but will show the insurance protection to which the employee is entitled . . . The policy and the application of the Employer . . . and the applications of the employees, if any, shall constitute the entire contract between the parties . . . This contract is issued and delivered . . . in the Commonwealth of Pennsylvania and is governed by the laws of that Commonwealth".

Defendant was not writing disability, life or group insurance in Texas in 1918, 1925 or 1932, the years respectively in which it issued to the oil corporation the above mentioned policies, Nos. G5039, G5545 and G5039R. March 21, 1932, the Texas Board of Insurance Commissioners issued its certificate authorizing defendant to pursue the business of life, health and accident insurance within that State for the year ending February 28, 1933. But since 1917 defendant has not written any contracts of insurance nor has it had there any agent qualified so to do. It has no licensed agent, has not qualified to write insurance contracts in Texas or since 1917 accepted any application for insurance originating in that State. The evidence is that respondent "has never written or delivered a contract or policy of insurance of any kind or character in the State of Texas".

On April 1, 1932, petitioner automatically became insured under the policy. The monthly premium for his insurance was $3; monthly deductions of $2.40 were made by the refining company

and sent by it to the oil corporation at Pittsburgh. Defendant charged the premiums to the oil corporation and the latter paid them by check sent from Pittsburgh to defendant at Hartford.

About May 1, 1932, respondent issued and delivered to the oil corporation an individual certificate stating that it was issued pursuant to the policy and that subject to its terms and conditions peitioner, John Boseman, an employee was insured under Schedule B of the policy. The certificate contained the above quoted policy provision requiring notice of disability. The oil corporation sent the certificate to petitioner's employer and July 20, 1932, the latter delivered it to petitioner in Texas. The defendant did not deal with the plaintiff or any of the employees of the refining company with reference to the insurance, certificates issued under the policy or premiums. All its dealings were with the oil corporation. Petitioner became totally disabled prior to termination of his employment which ended October 8, 1932. His insurance was canceled as of that date.

1. The oil corporation and respondent intended, and the policy definitely declares, that Pennsylvania law should govern. Undoubtedly, as between employer and insurer, Pennsylvania law controls.[1] "In every forum a contract is governed by the law with a view to which it was made".[2] But the precise issue for decision is whether, as between petitioner and insurer, the policy provision requiring notice of claim is governed by Pennsylvania law or Texas law. Petitioner and other insured employees were not parties to, nor did they have any voice in, the negotiation or consummation of the contract. The terms of the policy were settled by the oil corporation and respondent. Eligible employees were given opportunity upon specified conditions to have insurance by giving payroll deduction orders approved by their employer. The policy did not of itself insure petitioner or any other person. It merely made available specified insurance to certain employees. For the payment of premiums the insurer looked only to the corporation. The

[1] Equitable Life Society v. Clements, 140 U. S. 226, 232. Mut. Life Ins. Co. of New York v. Cohen, 179 U. S. 262, 264-265, 267. Northwestern Life Ins. Co. v. McCue, 223 U. S. 234, 246-247. New York Life Ins. Co. v. Dodge, 246 U. S. 357, 372 *et seq.* Mutual Life Ins. Co. v. Liebing, 259 U. S. 209, 214. Hartford Ind. Co. v. Delta Co., 292 U. S. 143, 150. Cf. Seeman v. Phila. Warehouse Co., 274 U. S. 403, 408-409. Home Ins. Co. v. Dick, 281 U. S. 397, 408. John Hancock Mutual Life Ins. Co. v. Yates, — U. S. —.

[2] Wayman v. Southard, 10 Wheat. 1, 48. Pritchard v. Norton, 106 U. S. 124, 136.

latter, for the benefit of its insured employees, assumed the burden of paying to the insurer premiums to which they by the deduction orders had contributed.[3] By his application petitioner accepted the provisions of the policy including the agreement of the oil corporation and respondent that the policy is governed by Pennsylvania law.

2. Petitioner insists that the delivery of the certificate in Texas made the law of that State, Art. 5546, applicable. But the certificate is not a part of the contract of, or necessary to, the insurance.[4] It is not included among the documents declared "to constitute the entire contract of insurance". Petitioner was insured on the taking effect of the policy long before the issue of the certificate. It did not affect any of the terms of the policy. It was issued to the end that the insured employee should have the insurer's statement of specified facts in respect of protection to which he had become entitled under the policy. It served merely as evidence of the insurance of the employee. Petitioner's rights and respondent's liability would have been the same if the policy had not provided for issue of the certificate. And plainly delivery of the certificate by the refining company to petitioner in Texas has no bearing upon the question whether Pennsylvania law or Texas law governs in respect of the notice of claim. We are unable to agree with decisions of the Court of Civil Appeals of Texas in cases similar to this that the certificate is a part of the contract of insurance or that its delivery is necessary to make the policy effective.[5] Nor are we required to follow their construction.[6]

3. In support of his contention that Texas law applies petitioner suggests that the insurer, acting through the employer as its agent

---

[3] See Meyerson *v.* New Idea Hosiery Co., 217 Ala. 153, 157.

[4] All States Life Ins. Co. *v.* Tillman, 226 Ala. 245, 248. Equitable Life Assur. Soc. of U. S. *v.* Austin, 255 Ky. 23, 26. Seavers *v.* Metropolitan Life Ins. Co., 132 Misc. 719, 722. Thull *v.* Eq. L. Assurance Society, 40 Ohio App. 486, 488. Metropolitan Life Ins. Co. *v.* Lewis (La. App.) 142 So. 721, 722. Hardie *v.* Metropolitan Life Ins. Co. (Mo. App.) 7 S. W. (2d) 746, 747. McBride *v.* Conn. Gen. Life Ins. Co., 14 F. Supp. 240, 241.

[5] Connecticut General Life Ins. Co. *v.* Moore, 75 S. W. (2d) 329. Connecticut General Life Ins. Co. *v.* Dent, 84 S. W. (2d) 250. Connecticut General Life Ins. Co. *v.* Lockwood, 84 S. W. (2d) 245. Metropolitan Life Ins. Co. *v.* Worton, 70 S. W. (2d) 216. Metropolitan Life Ins. Co. *v.* Wann, 81 S. W. (2d) 298.

[6] Carpenter *v.* The Providence Washington Insurance Company, 16 Pet. 495, 511-512. Washburn & Moen Mfg. Co. *v.* Reliance Ins. Co., 179 U. S. 1, 15. Aetna Life Ins. Co. *v.* Moore, 231 U. S. 543, 559. See Swift *v.* Tyson, 16 Pet. 1, 19. B. & W. Taxi. Co. *v.* B. & Y. Taxi. Co., 276 U. S. 518, 530, and cases cited.

in that State, solicited and procured him to take insurance under the policy. There is no evidence that the insurer expressly authorized the oil corporation or any of its subsidiaries to act for it in consummating insurance under the policy. Petitioner's election and the employer's application for the policy were made before the Texas Board authorized the insurer to do business in that State. By uncontradicted evidence it is shown that the insurer did not qualify to solicit or write insurance or accept any application originating there. Employers regard group insurance not only as protection at low cost for their employees but also as advantageous to themselves in that it makes for loyalty, lessens turn-over and the like.[7] When procuring the policy, obtaining applications of employees, taking payroll deduction orders, reporting changes in the insured group, paying premiums and generally in doing whatever may serve to obtain and keep the insurance in force, employers act not as agents of the insurer but for their employees or for themselves.[8] And wholly in accord with that view are the acts done in Texas that are claimed by petitioner to be attributable to the refining company or its agents. They are: The termination of the earlier policies; acceptance of petitioner's release of claims under them and his application under the new policy by the giving of payroll deduction orders; delivery of the certificate to petitioner; the forwarding to the oil corporation of the amounts deducted from his pay on account of premiums. None of these was done for or on behalf of the insurer. The undisputed circumstantial facts require the conclusion that the employer acted not as agent of the insurer but for and on behalf of petitioner and other insured employees and in its own interest.[9]

4. Petitioner cites Arts. 5054 and 5056, Revised Civil Statutes, as opposed to the lower court's ruling: "If employes in Texas desire to join in an insurance plan about to be set up or already in operation in Pennsylvania, and either in person or through their employer take steps in Pennsylvania to do so, the laws of Texas do

---

[7] Nohl *v.* Board of Education, 27 N. M. 232, 234 *et seq.* State ex rel. *v.* City of Memphis, 147 Tenn. 658, 663 *et seq.* Aetna Life Ins. Co. *v.* Lembright, 32 Ohio App. 10, 14. Encyclopaedia of Social Sciences, Vol. 7, Group Insurance, pp. 182, 185.

[8] Duval *v.* Company, 82 N. H. 543, 548. People ex rel. Kirkman *v.* Van Amringe, 266 N. Y. 277, 282. Connecticut General Life Ins. Co. *v.* Speer, 185 Ark. 615, 617. Leach *v.* Metropolitan Life Ins. Co., 124 Kan. 584, 589. Equitable Life Assur. Soc. of U. S. *v.* Hall, 253 Ky. 450, 452-453. Dewease *v.* Insurance Co., 208 N. C. 732, 734.

[9] See Note 8.

not control it." Article 5054 applies only to contracts of insurance made by an insurance company doing business in Texas.[10] The respondent did no business in that State.[11] Article 5056 merely declares that one who in Texas does specified things in respect of insurance shall be held to be the agent of the insurance company for which the act is done or the risk taken "as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter". Clearly there is nothing in that article as expounded by the Supreme Court of Texas (*Insurance Co.* v. *Walker*, 94 Tex. 473) that has any bearing on the question under consideration. The challenged ruling is sound and well supported by our decisions.[12]

5. The conclusion that Pennsylvania law governs the policy provision requiring notice of claim is supported not only by the making and delivery of the contract of insurance in that State, the declaration in the policy that Pennsylvania law shall govern and petitioner's acceptance of the insurance according to the terms of the policy but also by the purpose of the parties to the contract that everywhere it shall have the same meaning and give the same protection and that inequalities and confusion liable to result from applications of diverse state laws shall be avoided.[13]

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[10] Art. 5054 (then Art. 4950, Rev. Civ. Stat. 1911) is quoted in Aetna Life Ins. Co. *v.* Dunken, 266 U. S. 389, 390-391.

[11] Cf. Minnesota Assn. *v.* Benn, 261 U. S. 140, 145.

[12] Allgeyer *v.* State of Louisiana, 165 U. S. 578, 588. Minnesota Assn. *v.* Benn, 261 U. S. 140, 145. Aetna Life Ins. Co. *v.* Dunken, 266 U. S. 389, 399. Hartford Ind. Co. *v.* Delta Co., 292 U. S. 143, 149.

[13] See note 11. Cf. Royal Arcanum *v.* Green, 237 U. S. 531, 542. Modern Woodmen *v.* Mixer, 267 U. S. 544, 551.